

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE SOUTHERN DISTRICT OF INDIANA
 3 INDIANAPOLIS DIVISION
 4 CAUSE NO. 1:20-cv-03104-JMS-DML
 5
 6 LINDA L. STARKE COLSTEN,)
 7 Plaintiff,)
 8)
 9 -vs-)
 10 MUNCIE SANITARY DISTRICT)
 11 Defendant.)

12
 13 DEPOSITION OF LINDA L. STARKE COLSTEN
 14 The deposition upon oral examination of LINDA
 15 L. STARKE COLSTEN, a witness produced and sworn
 16 before me, Tracy Larimore, RPR, Notary Public in and
 17 for the County of Allen, State of Indiana, taken on
 18 behalf of the Defendant, at the offices of Bose
 19 McKinney & Evans, LLP, 111 Monument Circle, Suite
 20 2700, Indianapolis, Indiana, on the 16th day of
 21 April, 2021, scheduled to commence at 9:00 a.m.
 22 pursuant to the Indiana Rules of Trial Procedure
 23 with written notice as to time and place thereof.
 24
 25

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1 Q All right. And it looks like, alternatively,
 2 through your career, at least in the, the latter
 3 years, your job was either labeled as secretary
 4 in certain parts of the District, or office
 5 manager. Am I right about that?
 6 A Yes.
 7 Q Was there any practical difference in what you
 8 were doing in those two jobs?
 9 A Not really.
 10 Q I didn't get that sense.
 11 A I mean, it -- I mean, no, not really.
 12 Q Okay.
 13 A Some, some people have got a little more pay for
 14 it, but...
 15 Q Pay for the office manager versus the secretary
 16 job?
 17 A Uh-huh.
 18 Q But you did not?
 19 A No, I did not.
 20 Q All right. Well, it's a good place to start in
 21 terms of documents.
 22 I'll hand you, through the course of the
 23 deposition, documents that I have and ask you
 24 about those, give you the opportunity to look at
 25 them.

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1 different political parties?
 2 A (Shakes head.)
 3 Q Just political differences on what level? In
 4 other words, because I know you've had some
 5 other --
 6 A What they expected me to do and what was allowed
 7 by law and what I was and wasn't going to do.
 8 Q Okay. So give me more details about what was
 9 going on.
 10 A At that time period, they expected women to
 11 sleep with them, so there you go.
 12 Q That is a problem. So you have disagreed
 13 obviously and --
 14 A Obviously.
 15 Q -- and reasonably on that front. So did you --
 16 you left, and how long were you gone?
 17 A I was only gone from August, like I said, it was
 18 either August or September of '77, and then I
 19 went back to work because they kept calling me,
 20 wanting me to come back to work, and I finally
 21 went back in 1978, in July. July 28th of 1978.
 22 Q Did the board composition change --
 23 A Yes.
 24 Q -- or what made you feel comfortable?
 25 A Yes.

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1 A Sure.
 2 Q I don't think many of them are complicated,
 3 other than if you -- they have a big handbook,
 4 as you're probably aware. I'm going to hand you
 5 now what will be marked as Defendant's
 6 Deposition Exhibit 1.
 7 (WHEREUPON, Exhibit Number 1, Position
 8 Description - Secretary, was marked for
 9 identification.)
 10 MR. SWIDER: I'll give you one. I'll give
 11 you one, Aaron.
 12 MR. WILLIAMSON: Thank you.
 13 Q And then I will -- I'm going to give yours to
 14 the court reporter and she'll put a stamp on it.
 15 So what I've handed you goes back to 2010,
 16 and it looks like it is a job description for
 17 secretary, which doesn't have your signature on
 18 it, so I don't even -- I won't even ask you,
 19 especially going back that far -- who made the,
 20 the change here between sanitation and BWQ. I'm
 21 not sure it's relevant, but maybe it is. BWQ
 22 is --
 23 A Bureau of Water Quality.
 24 Q Bureau of Water Quality. That's what -- Bureau
 25 of Water Quality, which was a position in the

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1 District. Was it -- is sanitation just the same
 2 thing as Bureau of Water Quality? Or is that a
 3 broader term? Do you see how sanitation has
 4 been marked out there and BWQ has been added?
 5 A Yes. I see that.
 6 Q Is there -- in your mind, was there any
 7 difference between Bureau of Water Quality and
 8 just the sanitation department? Is that a
 9 separate division?
 10 A Yeah. They're two different departments.
 11 Q Okay. Okay. So there is a sanitation
 12 department?
 13 A Yes.
 14 Q Separate from the BWQ department?
 15 A Yes.
 16 Q Okay.
 17 A And if --
 18 Q Go ahead. What is it? Because it will help me
 19 understand the difference. So the, the
 20 sanitation department, what did they do that was
 21 different from the, from the water quality?
 22 A Well, the, the secretary's position, probably
 23 not a lot.
 24 Q Okay.
 25 A But departments are different.

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1 Q Okay. And what do they do that's different?
 2 A Sanitation?
 3 Q Uh-huh.
 4 A They pick up trash.
 5 Q Uh-huh.
 6 A Water quality is responsible for keeping track
 7 of pollutants in the river, trying to keep the
 8 river clean.
 9 Q What river is that?
 10 A White River.
 11 Q Were there more employees working for the
 12 sanitation department, generally, than there
 13 would be for the BWQ department?
 14 A Yes.
 15 Q And what would you say that ratio would be or --
 16 approximate numbers? I'm not holding you to it.
 17 I'm just trying to get a sense.
 18 A Oh, my goodness. We had probably less than 20.
 19 Q In BWQ?
 20 A Uh-huh.
 21 Q And sanitation would be a lot, I would assume?
 22 A It would probably be 100 or more, maybe.
 23 Q Because you have all the people picking up the
 24 garbage, or the trash?
 25 A Right.

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1 Q Okay.
 2 A I mean, that's just a guess. I mean, I'm not --
 3 you know.
 4 Q It makes sense that that department would be
 5 considerably smaller than the sanitation
 6 department, because I wasn't even aware that
 7 there was this separate department.
 8 And just to outline a little bit, if you
 9 can help me, in Muncie Sanitary District, those
 10 are two departments. I assume there's
 11 administration?
 12 A Muncie Sanitary District has an administration
 13 office.
 14 Q And then are there other, a lot of other
 15 departments or just a few?
 16 A They have an engineering department. They have
 17 a sewer maintenance department.
 18 Q Okay.
 19 A They have a water pollution control.
 20 Q Water pollution...
 21 A Control.
 22 Q Control.
 23 A They have a storm water, which falls kind of
 24 under the Bureau.
 25 Q Of Water Quality?

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1 A Quality.
 2 Q Okay.
 3 A And then they have sanitation and water quality,
 4 water quality. And I may -- I don't think I've
 5 left anything out but...
 6 Q Did you say sanitation and water quality,
 7 separate from what we've talked about already?
 8 In other words, we've got the Bureau of
 9 Water Quality?
 10 A Okay.
 11 Q And then you've got storm water under that. And
 12 then it sounded like your last department also
 13 dealt with water. I thought you said sanitation
 14 and water?
 15 A No. Just sanitation, water pollution control,
 16 or wastewater treatment, because they changed
 17 their name. When I went to work for them, it
 18 was wastewater treatment.
 19 Q All right.
 20 A And then they changed it to water pollution
 21 control.
 22 Q Okay.
 23 A So they have water pollution control.
 24 Q Sewer maintenance?
 25 A Sewer maintenance, sanitation, BWQ --

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1 Q Yep.
 2 A -- and then the storm water.
 3 Q Okay. Storm water is another one. Now, do --
 4 as you look at the size of these departments,
 5 and I'm putting this --
 6 A They also have a billing office. Sorry.
 7 Q Which would be part of administration or not?
 8 A No. It's a separate office.
 9 Q Okay.
 10 A It's financial. I'm not sure what they call it
 11 now. It used to be the billing office. I don't
 12 know if it's still called billing office or not.
 13 Q And all of these are Muncie Sanitary District
 14 departments, separate from the City of Muncie
 15 and all its departments; correct?
 16 A Yes.
 17 Q And so from your standpoint, as you recall, was
 18 the sewer maintenance department about the same
 19 size as BWQ, or was that smaller?
 20 A No. They have more employees.
 21 Q More employees. And do they have their own
 22 secretaries? I assume they do as well?
 23 A At the time, there was two employees.
 24 Q Two secretaries or two --
 25 A I don't know what their titles were for sure.

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1 Q Okay. Okay. When you say "two employees" --
 2 A Uh-huh.
 3 Q -- you mean not overall, you mean...
 4 A Well, they had two office people.
 5 Q Oh, office people, okay. That's what you meant.
 6 Got it.
 7 How many office people, as you described
 8 them, would BWQ have at any given time? Would
 9 it just be the one?
 10 A Just the one.
 11 Q Okay. And then sanitation department probably
 12 has several?
 13 A As far as I know, they had three or four.
 14 Q Okay. And then administration, I guess they --
 15 do they have -- they would have receptionists,
 16 secretaries or...
 17 A They would have a receptionist on and off, but
 18 they had one office manager.
 19 Q Okay. And the size of that department, I'm just
 20 comparing with BWQ, same? Larger? Smaller?
 21 A What --
 22 Q Total number of employees' in administration?
 23 A -- the admin?
 24 Q Yeah.
 25 A It's smaller.

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1 Q Uh-huh. And then water pollution control?
 2 A Had one secretary.
 3 Q One secretary. And was it generally --
 4 department bigger or smaller than BWQ?
 5 A It was larger.
 6 Q Larger. Substantially larger or just --
 7 A No, because they have three shifts.
 8 Q Oh, okay. So it is larger?
 9 A Yeah. I mean -- and I don't know want to say
 10 that -- the shifts aren't that large.
 11 Q Okay.
 12 A They -- you got to remember, I've not been there
 13 for a while --
 14 Q I understand. I understand.
 15 A -- but I used to be -- I used to work in that
 16 department.
 17 Q Ah.
 18 A And when I worked in that department, there were
 19 at least three operators a shift, and then --
 20 Q Okay.
 21 A -- they also had a maintenance department that
 22 had at least probably 10 or 15 people. And they
 23 had a belt press crew, but it was all under one
 24 department.
 25 Q Okay. And then finally, storm water?

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1 A That was one person.
 2 Q Okay.
 3 A Well, two.
 4 Q And they had a billing office?
 5 A And then in the billing office, I'm not -- I
 6 don't recall exactly how many employees they
 7 had --
 8 Q Uh-huh.
 9 A -- but they had at least five.
 10 Q Okay. Back to Exhibit 1 -- thank you. That is
 11 very helpful.
 12 Exhibit 1, now I understand there's a
 13 difference, obviously, between the sanitation
 14 department and BWQ.
 15 Going back, let's say -- this is 2010 --
 16 would you have been working for BWQ in 2010? Or
 17 had you gone back and forth? Do you recall?
 18 A I don't, I don't remember when I went to BWQ.
 19 Q Okay. And I have a couple documents --
 20 A I really don't.
 21 Q -- that might help us.
 22 A That's fine.
 23 Q Let's take a look --
 24 A Right off the top of my head, I don't remember
 25 exactly. I do know that -- I do know the job

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1 that I signed up for, it was for an office
 2 manager's position.
 3 Q In BWQ?
 4 A Yes.
 5 Q And you had applied for a lateral transfer and
 6 didn't get it one time?
 7 A Yes.
 8 Q And I've got, I've got a document on that, I'll
 9 bring out in a minute.
 10 A Yes.
 11 Q Okay. But just running from -- and, and I'm
 12 looking -- if we're looking at 2010, that's ten
 13 years before you left, were you --
 14 A I didn't work --
 15 Q -- still going back and forth or were you at
 16 BWQ?
 17 A -- I didn't work -- I don't -- I don't remember.
 18 Q But --
 19 A I don't think I worked at water quality ten
 20 years. I might have, but I don't think I did.
 21 Q So you were with sanitation department before
 22 you went to BWQ?
 23 A I worked at sewer maintenance prior to --
 24 Q And how long --
 25 A -- water quality.

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1 Q -- how long were you sewer maintenance? Was
 2 that the majority of your career?
 3 A No.
 4 Q Okay.
 5 A Engineering was the majority of my career, but
 6 at one point, engineering and sewer maintenance
 7 were in the same department. And I worked sewer
 8 maintenance and as a -- I cleaned sewers.
 9 Q Physically?
 10 A Yes.
 11 Q There's no shame --
 12 A There's no --
 13 Q -- in that.
 14 A -- I mean, there's no other way of putting it.
 15 Yes, I did clean sewers.
 16 Q But that would go back quite a ways?
 17 A Yes.
 18 Q Because I don't see anything in this job
 19 description --
 20 A No. There's nothing in that that -- in this job
 21 position that would say that I would have to do
 22 that, no.
 23 Q Okay.
 24 A Other than maybe the lesson that says you do
 25 what you're told.

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1 Q Right. All right. So these changes, from the
 2 engineering department and then the sewer
 3 maintenance to sanitation and BWQ, this happens
 4 as part of your career?
 5 A Most of the moves that I made were for a higher
 6 rate of pay.
 7 Q That makes sense.
 8 A It was to help myself and my kids. Simple as
 9 that.
 10 Q Yep.
 11 A I mean, I don't know how else to put it.
 12 Q I think we all understand that.
 13 And so again, was there a point near the
 14 end of your work for the District where you were
 15 just in BWQ?
 16 A Yeah.
 17 Q And would that be, could that be as many as five
 18 years?
 19 A About, I'd say.
 20 Q Last five years?
 21 A Yeah, about that.
 22 Q Let's look at that for a guidepost and then
 23 these documents may help us out, because this --
 24 the reason why I focused on 2010, because this
 25 document was in your personnel file, but it may

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1 have nothing to do with you, because if -- and
 2 the date maybe doesn't indicate anything
 3 because, even though this job description was
 4 written in April of 2010, you might have gotten
 5 the job in April of 2015, with the same job
 6 description.
 7 Were you working days? This has 7 a.m. to
 8 3 p.m.
 9 A Yes.
 10 Q And for the last five years?
 11 A (Nods.)
 12 Q We'll use that as a benchmark. And so at the
 13 time that you left, would this have been an
 14 accurate job description? And I'm looking at,
 15 you know, "Answers telephones, greets office
 16 visitors, determines nature of call, responds to
 17 inquiries" --
 18 A Yes.
 19 Q And I think, generally, in the complaint itself
 20 that was filed in this case, you also have at
 21 least a summary of duties, and -- let's see what
 22 this says. So in Paragraph 17 of the complaint,
 23 and I'll bring this exhibit out later, but take
 24 a look at 17. Would you read that for the court
 25 reporter?

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1 A It says, "During her tenure as secretary,
 2 Colsten's duties included answering telephones,
 3 greeting and assisting visitors, various
 4 clerical duties, and assisting with payroll."
 5 Q Is that an accurate description of what you were
 6 doing at the time of your separation?
 7 A Well, I also took care, made sure that our
 8 budgets were straight and --
 9 Q Okay.
 10 A -- paid the claims that were -- or invoices that
 11 were submitted.
 12 Q Let me give you -- we'll just go ahead and put
 13 it in the record now, the Complaint, and we'll
 14 mark that as Exhibit 2, so we all are on the
 15 same page here.
 16 (WHEREUPON, Exhibit Number 2, Complaint for
 17 Damages, was marked for identification.)
 18 MR. WILLIAMSON: Thank you.
 19 MR. SWIDER: Sure.
 20 Q So what I just went through with you was a
 21 discussion of Exhibit 2, and I believe this is
 22 the Complaint that was filed on your behalf to
 23 initiate the lawsuit in this case.
 24 Take a look at it and let me know if you
 25 agree with that.

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1 A I was advised to file the Complaint with the
 2 EEOC.
 3 Q I'll have that, too, and I see the confusion,
 4 perhaps. In order to file the lawsuit, at least
 5 on a couple of your claims, the age claim and
 6 the disability claim, you would first have to
 7 file a charge with the Equal Employment
 8 Opportunity Commission and/or Indiana Civil
 9 Rights Commission. And you did file a charge
 10 with the Equal Employment Opportunity
 11 Commission, which I will bring out as well.
 12 A Yes.
 13 Q But then, after those were dealt with, then this
 14 lawsuit was brought. And, and that's when the
 15 FMLA claim was added, because there was no
 16 agency requirement for that.
 17 So this would be the lawsuit or the
 18 Complaint that underlies the lawsuit in this
 19 situation. Does this look familiar to you on
 20 that front?
 21 A Uh-huh.
 22 Q Did you, did you get to look at this before it
 23 was filed?
 24 A Uh-huh.
 25 Q Okay. So in the context of the job description,

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1 I note there are several things on Exhibit 1,
 2 and I'm trying to cover with you what, you know,
 3 the major part of your job was. And consistent
 4 with the job description, particularly the first
 5 paragraph, is Paragraph 17 of the Complaint
 6 where we've outlined some duties: Answering
 7 telephone, greeting and assisting visitors,
 8 various clerical duties, assisting with payroll,
 9 and then you just mentioned keeping budgets
 10 straight. What does that entail?
 11 A To make sure that we didn't run out of money.
 12 Q Okay. You don't want to run out of money.
 13 How, how would you administer that? In
 14 other words, would you, then, see the budget
 15 which would be what you expect to happen during
 16 the year, and compare that with what was
 17 actually happening during the year on a regular
 18 basis to see that those two weren't too far out
 19 of line? Is that a fair statement?
 20 A Yes.
 21 Q And would you do that monthly? Weekly?
 22 Semi-yearly? Do you remember?
 23 A Biweekly.
 24 Q Okay. And if you saw problems arising, who
 25 would you raise those with?

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1 A Rick.
 2 Q Okay. And by "Rick," you mean Rick Conrad?
 3 A Yes.
 4 Q Sitting with us today.
 5 Pulling invoices, what does that entail?
 6 A You mean paying invoices?
 7 Q Probably, because I can't read my own writing.
 8 All right. So paying invoices?
 9 A Well, when our department would purchase an item
 10 from, say, Menards --
 11 Q Yes.
 12 A -- they would send an invoice to our department,
 13 and I would get on the system that we used, and
 14 make sure that that bill or invoice got paid
 15 from our budget, not --
 16 Q Okay.
 17 A -- not sewer maintenance or water quality or
 18 any --
 19 Q Some other department?
 20 A Some other department.
 21 Q Anything that you would include, you know, as a
 22 general part of your job description and duties
 23 as a secretary at BWQ? And take a look at
 24 Exhibit 1, if that's helpful in terms of
 25 triggering other things that you might have been

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1 doing.
 2 A Huh-uh. Will you say that again?
 3 Q Of course.
 4 I'm looking at what your job
 5 responsibilities and duties were at the time of
 6 your termination --
 7 A Okay.
 8 Q -- essentially.
 9 A And that's -- okay.
 10 Q Is that generally -- we covered those?
 11 A Yes. And that's --
 12 Q Yes, consistent with Exhibit 1, it has a lot of
 13 other things that aren't related to what we
 14 discussed.
 15 A Yes.
 16 Q And many are. But if you look at Paragraph 17
 17 of the Complaint, and you add to it, you know,
 18 making -- reconciling the budget, or keeping the
 19 budget straight, and paying invoices, do we
 20 pretty much have what you did?
 21 A Yes.
 22 Q Very good.
 23 Now, when you were with the District, I
 24 assume you had various versions of a handbook?
 25 A Yeah. You could say that.

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1 Q And it was a big handbook. Is that a fair
 2 description of the handbook? It had a lot in
 3 it. I'm going to hand you it now and --
 4 A It was when I started, and then it was whittled
 5 down to --
 6 Q So it was bigger when you started than --
 7 A Yeah.
 8 Q This is a 2019 version. So let's, let's take a
 9 look at this for a minute. I'm going to hand
 10 you what will be marked as Exhibit 3.
 11 (WHEREUPON, Exhibit Number 3, Personnel
 12 Policies Handbook - Muncie Sanitary District,
 13 was marked for identification.)
 14 Q And I'll hand you, with it, what will be marked
 15 as Exhibit 4.
 16 (WHEREUPON, Exhibit Number 4, Employee
 17 Acknowledgement Form, was marked for
 18 identification.)
 19 A Thank you.
 20 Q And you can see that Exhibit 3 and Exhibit 4
 21 relate to the 2019 Muncie Sanitary District
 22 Handbook --
 23 A Yep.
 24 Q -- right? Did you ever see the City of Muncie
 25 Handbook?

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1 A City of Muncie's handbook?
 2 Q Yes.
 3 A No.
 4 Q In terms of this handbook, which covers the
 5 District, you mentioned just a few minutes ago
 6 that this handbook had changed in scope and
 7 maybe size over the years, and it got smaller
 8 rather than bigger.
 9 So were there -- do you recall how, how
 10 that came about? Because I know, at one point,
 11 I think during your EEOC charge with the, the
 12 agency, you responded to a position statement
 13 that we submitted. And one of the things I
 14 think you said was that the handbook became less
 15 employee friendly. Is that an accurate --
 16 A Yeah. That's accurate. Accurate. I'm sorry.
 17 Q And what happened over the course of the years
 18 to, in your -- as you recall, to make that
 19 happen?
 20 A Well, at one point, there was a procedure that
 21 employees could take, where if they were --
 22 excuse me.
 23 Q Can I get you anything? Water?
 24 A No. I'm fine.
 25 Q Okay.

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1 A They could -- if, if they had a complaint, they
 2 could file a complaint with the department head.
 3 And it would go to a, a committee that was,
 4 like, the -- I think it was the board president
 5 and a department person. I'm not sure.
 6 Q Sure. I understand. It was a process for
 7 complaints?
 8 A There was a process that they went through. And
 9 then there would be a ruling, and if I -- you'd
 10 have to look in this, because I don't --
 11 Q Let me take you there.
 12 A I don't think it's in there now.
 13 Q Let me take that, because I'll show you what I
 14 think is in there now on that front, but let me
 15 first go back and ask you whether Exhibit 4 is
 16 your acknowledgment of receipt of Exhibit 3?
 17 A Yes.
 18 Q And that's your signature --
 19 A Yes.
 20 Q -- correct, on Exhibit 4?
 21 A Yes.
 22 Q Okay. If you look at the very end of Exhibit 3,
 23 and that would be Page Number 88, that outlines
 24 what's called "Problem Resolution."
 25 And take a look at that and see if that's

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1 different from what you just described, if you,
 2 if you recall?
 3 A It's similar, yes. Yeah, it's kind of the same
 4 but...
 5 Q Let's take a look at Step 3, "In other words, if
 6 the complaint cannot be solved satisfactorily,
 7 it may be reviewed by the Board of Sanitary
 8 Commissioners, president, upon request by the
 9 District administrator or employee."
 10 A Uh-huh.
 11 Q "The President's findings and recommendations
 12 are binding on the District and the employee."
 13 A Uh-huh.
 14 Q "In the event that the employer requests a
 15 review, he shall first notify the District" --
 16 "He/she shall first notify the District
 17 administrator."
 18 So it looks like the board president makes
 19 a final decision, but then a review of that can
 20 be obtained by going through the District
 21 administrator, which at the time you left, was
 22 Nikki Grigsby. And she was on leave, obviously,
 23 so Bill Smith, as the president of the, of the
 24 board, was handling that function.
 25 But all of this really goes to the question

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1 how this handbook got changed and what you meant
 2 at the EEOC and from your -- as you're looking
 3 at this, the complaint procedure may have been
 4 different?
 5 A Not at that time -- I mean, I didn't file a
 6 complaint --
 7 Q No, I know.
 8 A -- towards the District --
 9 Q Right.
 10 A -- because I --
 11 Q You mean over your termination?
 12 A Yes.
 13 Q Okay.
 14 A What was the point?
 15 Q I understand, and, and -- because you had
 16 already been terminated, and you were terminated
 17 by the very person who would -- you'd file your
 18 complaint with?
 19 A Exactly.
 20 Q Okay. So I have -- I understand that. But I
 21 was just looking at the general proposition that
 22 the handbook, over the years, had become less
 23 employee friendly?
 24 A Yeah. And it --
 25 Q Do you have other examples of that? Or is it...

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1 A It was -- I don't know. Well, at one point, the
 2 District was unionized.
 3 Q I didn't know that.
 4 A Uh-huh.
 5 Q I did not know that.
 6 A Yeah.
 7 Q And so --
 8 A They were union. They were -- they had the
 9 Teamsters back in the day.
 10 Q And were you part of the bargaining unit?
 11 A I was not.
 12 Q Okay.
 13 A I was, however, a part of the bargaining unit
 14 after the Teamsters was dismissed by one of the
 15 mayors that came in, one of the newer mayors
 16 that came in. And the District employees
 17 decided they wanted another union, and they
 18 voted to have a union, and the District sat down
 19 with employees and financial manager and I don't
 20 recall who else was --
 21 Q Uh-huh.
 22 A -- there from the --
 23 Q Uh-huh.
 24 A -- but I was on that committee, yes.
 25 Q I'm not going to hold you to this, but are you

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1 the union, then the union was disbanded by the
 2 mayor at that time. I mean, that's part of the,
 3 part of the crazy environment you were in;
 4 right? I mean, the mayor and the political
 5 party changes and all the rules can change.
 6 A Uh-huh.
 7 Q And so in that '80s period, you became a little
 8 bit more involved on the representing employees'
 9 side, and that might have, that might have
 10 changed the handbook or, or -- because you have
 11 an opportunity, as the representative, and the
 12 union had an opportunity to negotiate whether
 13 handbook changes would happen or not and the
 14 employee could say no or yes, but you could have
 15 an impact?
 16 A At that point, yeah, but it fell through.
 17 Q Okay.
 18 A They didn't go -- they didn't follow through.
 19 They didn't go through with the union because --
 20 well, it just didn't go through.
 21 Q Right.
 22 A And employees wanted to close shop and it wasn't
 23 going to happen, so from there on out, it was
 24 whatever the District wanted to put in a
 25 handbook, and that's the way you went, whether

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1 you liked it or whether you didn't.
 2 Q And there were things about that you didn't
 3 like, I assume?
 4 A Well, there's things that every employee is not
 5 going to like --
 6 Q Right. Right.
 7 A -- I mean, you know...
 8 Q Did you -- I had a sense from talking with Rick,
 9 that there were -- that you felt -- I don't want
 10 to mischaracterize this, but did you -- were you
 11 at odds at times with management over how
 12 employees were treated?
 13 A Yes. Sometimes.
 14 Q And would you make that known, from time to
 15 time?
 16 A I'm not going to lie to you, yes.
 17 Q All right. And did you, did you enjoy that a
 18 little bit or -- again, I'm looking at
 19 conversations you had with Rick in terms of your
 20 being involved in change --
 21 A No. I didn't enjoy it.
 22 Q Okay. What was your general position?
 23 A It just -- I believe in people being treated
 24 fairly. And when you've got two employees and
 25 you've got one being treated one way and one

Page 43

1 being treated another way, that's not fairly.
 2 Q Okay.
 3 A And yes, that's when I get a little irritated
 4 and that's usually when I speak up.
 5 Q Okay.
 6 A And I never blindsided Rick.
 7 Q And, and I'm not -- and I have heard nothing to
 8 the contrary, please.
 9 I, I just in, in brief conversation with
 10 Rick, talking about the employment situation, it
 11 sounded like there were things you were unhappy
 12 with?
 13 A Oh, yeah.
 14 Q But you were upfront about it. You were upfront
 15 about it?
 16 A You betcha.
 17 Q Absolutely.
 18 A And not only with Rick.
 19 Q Right. And --
 20 A But that doesn't have anything to do with -- as
 21 far as I know.
 22 Q With what?
 23 A With why I was let go.
 24 Q Okay. So there were never points at which you
 25 expressed that you were let go because of those

Page 44

1 disagreements?
 2 A No.
 3 Q Did you express that to anybody?
 4 A No. Not to my knowledge, no.
 5 Q Okay. And how did you -- what was your
 6 relationship with Bill Smith on that front?
 7 A Wasn't a very good one.
 8 Q Okay. And why?
 9 A Because when he came out to talk to me, he
 10 actually gave me a choice.
 11 Q Okay. And that relates to the termination?
 12 A Yes.
 13 Q And I'm going to get to that. I just want to
 14 have some background before that.
 15 Were there other issues that you and Bill
 16 had discussed where you had disagreement prior
 17 to your termination?
 18 A Such as?
 19 Q That's my question to you.
 20 A Well --
 21 Q Maybe there isn't any.
 22 A I'm just asking because I'm sure that he and I
 23 had disagreements on a lot of things --
 24 Q Okay.
 25 A -- so I mean, unless you're -- you know...

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1 Q Well, no. I'm asking you the questions because
 2 I need to understand it from your standpoint.
 3 A Okay.
 4 Q My standpoint isn't going to be anything close
 5 to yours.
 6 When you say you had disagreements, do you
 7 remember --
 8 A Well, yes, we had a lot of disagreements on
 9 things about the District that should and should
 10 not have happened that --
 11 Q Okay. Such as, if you remember?
 12 A One was the canal.
 13 Q Okay. What was that? What happened there?
 14 A They built a canal. It was a block long. It
 15 cost a lot of money. It cost the rate payers a
 16 lot of money. It cost citizens. And it
 17 shouldn't have cost anybody that kind of money
 18 to get rid of storm water.
 19 Q When was --
 20 A I mean, there was just things like that.
 21 Q Lots of those things?
 22 A I mean, it wasn't just employees. It wasn't
 23 always a difference of how they treated
 24 employees. It was a difference -- you know, I'm
 25 a homeowner.

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1 Q Yes.
 2 A I pay taxes.
 3 Q Yes.
 4 A I pay my sewage bill.
 5 Q Yes.
 6 A And when they do that and it costs me money to
 7 pay my sewage bill, and it costs me more money,
 8 then yes, it ticks me off.
 9 Q And you would raise that with Bill? You felt
 10 comfortable enough to do that?
 11 A I would feel comfortable if it was Biden sitting
 12 there. I don't care who it is.
 13 Q Good. All right.
 14 And other issues, do you remember issues
 15 like that? Because those, those are -- that
 16 certainly makes sense. And that was a -- there
 17 wasn't anything you could do about it, other
 18 than complain about it?
 19 A That's exactly right. And I have that right.
 20 Q Absolutely.
 21 A I have a right for free speech.
 22 Q Absolutely.
 23 A That's all there is to that.
 24 Q Any other --
 25 MR. SWIDER: Yes?

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1 MR. WILLIAMSON: Whenever you're ready, if
 2 we could take a break. Five or ten minutes.
 3 MR. SWIDER: Oh, okay. Okay. Sure. I
 4 want to hit this strand, if we can.
 5 Q Any other issues that you recall, like the
 6 canal? I mean, that was, that was obviously a
 7 big issue. How long ago was that canal
 8 situation?
 9 A Couple, three years ago.
 10 Q Okay. Any other issues like that that jump out
 11 at you?
 12 A Yeah.
 13 Q What else?
 14 A I might as well just get it out there.
 15 Q Please.
 16 A There's a project that they did on -- I think it
 17 was on Ribble, and it looked really nice. The
 18 sidewalks looked really nice, except they put
 19 phone poles or utility poles in sidewalks and
 20 people in wheelchairs have to maneuver around
 21 them. Now, you tell me that makes sense.
 22 Sorry.
 23 Q No. No. I mean, that makes sense. I mean --
 24 A So yes.
 25 Q And you live in that community?

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1 A There were a lot of things that happened like
 2 that that upset me.
 3 Q Okay. Okay. And that's --
 4 A And we were made to go to their ribbon cuttings
 5 and look happy and -- so that they could have a
 6 lot of people in their pictures for the
 7 newspaper.
 8 Q All right. And so as you described, there were
 9 several of these types of agreements --
 10 A Yes.
 11 Q -- or disagreements that you had with Bill?
 12 A Yes.
 13 Q Did you have those with any other board
 14 representatives?
 15 A No.
 16 Q Okay. Okay.
 17 A He was the president.
 18 Q True. Were you able -- I assume not, but were
 19 you able to effect any change? Or at least, did
 20 he understand what you were saying?
 21 A Well, he understood, but no.
 22 Q Didn't make a difference?
 23 A No.
 24 Q All right. There was a point at which you were
 25 disciplined for political -- was it political

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1 work on company time? Do you remember that
 2 situation?
 3 A I remember being disciplined by Tracy Barton --
 4 Q Okay.
 5 A -- who is now under investigation by the FBI.
 6 Well, he's under an indictment. I don't know
 7 when their hearing is going to be, but anyway...
 8 Q That would be the same with Nikki Grigsby?
 9 A Yes.
 10 Q Okay.
 11 A I was written up for the same thing on the same
 12 day, written two different ways. One, and then
 13 the second one was so that he could give me time
 14 off with no pay.
 15 Q You got suspended for a week?
 16 A Yes.
 17 Q Okay.
 18 A Five days.
 19 Q Right. All right. I'll give you that
 20 suspension, if you want to take a break now,
 21 we'll --
 22 A Yeah. I need some water.
 23 Q Absolutely.
 24 MR. SWIDER: Let's get you water and a
 25 bathroom break.

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1 (A short recess was had.)
 2 BY MR. SWIDER:
 3 Q All right. We're back on the record --
 4 A Okay.
 5 Q -- and let me give you now what we've marked as
 6 Exhibit 5, I think.
 7 (WHEREUPON, Exhibit Number 5, June 4, 2012
 8 Memorandum, was marked for identification.)
 9 MR. WILLIAMSON: Thank you.
 10 Q I've just handed you what has been marked as
 11 Exhibit 5 --
 12 A Uh-huh.
 13 Q -- and realized that I hadn't really finished
 14 talking to you about Exhibit 3.
 15 A Oh.
 16 Q So let's go back to that for a minute and just a
 17 few provisions of the handbook I wanted to go
 18 over with you. And this is going to be based on
 19 your recollection again, because this handbook,
 20 as you know, went into effect in 2019. So there
 21 might have been other versions, but to the
 22 extent that you remember that that's a change,
 23 as I go through a few policies, let me know.
 24 I'm not -- if you don't say it's a change,
 25 that doesn't mean that it isn't. It's just your

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1 own recollection, because these are policies,
 2 that generally, that you would see in any
 3 handbook --
 4 A Okay.
 5 Q -- but I just want to be sure that -- so look,
 6 first, at Page 1, and you'll see, in Section
 7 1.1, that second paragraph talks about you, you
 8 and all the other employees in the District as
 9 being at-will employees.
 10 Do you know what that means?
 11 A Uh-huh.
 12 Q What does that mean to you?
 13 A They don't -- as far as -- they don't -- they
 14 can come in and say, "We don't need you and
 15 you're gone."
 16 Q Right. They can fire you for any reason at any
 17 time for no reason, good, bad, or no reason at
 18 all --
 19 A Right.
 20 Q -- or you can quit at any time?
 21 A Right.
 22 Q All right. And then Page 2, you see there's an
 23 Equal Employment Opportunity clause?
 24 A Uh-huh.
 25 Q And that, too, would probably be pretty standard

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1 and not a change, unless you remember any change
 2 which says, "No employee or applicant for
 3 employment will be discriminated against because
 4 of race, color, creed, religion, age, national
 5 origin, sex, disability, genetic information, or
 6 any other classification under local, state, or
 7 federal law. Equal Employment Opportunity
 8 includes, but is not limited to hiring,
 9 promotion, transfer, demotion, termination,
 10 training."
 11 So it's kind of a limit on the at-will
 12 doctrine, so you can be fired at any time for
 13 any reason, except based on your age, based on
 14 your disability, and while not stated here,
 15 based on FMLA filings. So those would be
 16 exceptions to, to the rule.
 17 During the course of your employment prior
 18 to your termination, did you ever make a
 19 complaint based on this EEO policy?
 20 A No.
 21 Q Okay. And if you look at Page 23, I'll ask you
 22 once you get there.
 23 A Okay.
 24 MR. SWIDER: Off the record.
 25 (A short recess was had.)

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1 MR. SWIDER: All right. Back on.
 2 BY MR. SWIDER:
 3 Q So that looks to be the District's Family and
 4 Medical Leave Act policy, and you can see it
 5 stretches for several pages.
 6 A Right.
 7 Q You did take FMLA while you were working for the
 8 District; did you not?
 9 A Yes.
 10 Q Did you ever feel that you were treated unfairly
 11 prior to the termination, based on your FMLA
 12 time that you took off or requested? Was there
 13 anything that suggested to you that they weren't
 14 following this policy?
 15 And you can take a look at the policy if
 16 you want. You can see on 24, you're entitled to
 17 12 weeks of paid or unpaid FMLA leave for
 18 situations like yours, your own serious health
 19 condition.
 20 A Right.
 21 Q This was a right that law recognizes and that
 22 this handbook appears to recognize for several
 23 pages. So let me back up.
 24 You did take FMLA intermittent leave?
 25 A Yes.

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1 Q Did you take any leave on a full-time basis? In
 2 other words, for a period of time like a week or
 3 two weeks or three weeks? I think you might
 4 have taken that --
 5 A I did --
 6 Q -- kind of leave as well?
 7 A -- in -- yes, because I did fall and I had a
 8 broken femur and a cracked pelvic bone, and I
 9 was in a nursing home --
 10 Q Hmm.
 11 A -- in September of 2019.
 12 Q And I've got documentation of that, so we'll
 13 look at that, because there are other FMLA
 14 leaves you took on an intermittent basis, but
 15 that one I'm familiar with because --
 16 A That was the only one that I believe that I took
 17 that was consecutive.
 18 Q Right. Consecutive weeks. But there was
 19 another time when you were off for several
 20 weeks. And the reason I know that is because
 21 the policy lets people give you sick time --
 22 A Yes.
 23 Q -- so that you don't have to dig into your
 24 vacation. And I think one of the people that
 25 gave you 40 hours --

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1 A Yes.
 2 Q -- was Rick Conrad?
 3 A Was Rick.
 4 Q What was that?
 5 A I believe that's when I had pneumonia.
 6 Q Okay. But for now, the question is: Did you
 7 feel, at all, that you were not given your FMLA
 8 rights while you worked for the District?
 9 A No. Not -- I mean, not -- I mean, I've -- no.
 10 Q When you asked for it, you got it?
 11 A Yeah. The personnel department gave it to me,
 12 yes.
 13 Q All right. And, and you may not be fully aware
 14 of this, but when you say "the personnel
 15 department," my understanding is -- tell me if
 16 I'm right -- that while the District and the
 17 City are independent bodies, there are certain
 18 functions that they have a work-sharing
 19 agreement over. Are you familiar with that?
 20 A Yes.
 21 Q And that work-sharing agreement, as I understand
 22 it, has the District providing benefits help,
 23 Melanie Lanich, for instance, does the benefits
 24 side for the City and for the District. On the
 25 other hand, personnel issues, the, the City

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1 helps the District.
 2 And so when you would apply for FMLA leave,
 3 you would go generally through Sarah Beach;
 4 right?
 5 A Yes.
 6 Q And is she with the City or with the District?
 7 A She was actually called the City personnel.
 8 Q Right. And that's what I'm saying.
 9 A Yes.
 10 Q Part of that work sharing would go to the
 11 City --
 12 A Yes.
 13 Q -- and then Sarah Beach would approve, and I've
 14 got documents where she approves your FMLA
 15 leave?
 16 A Yes.
 17 Q Okay. And to the extent she does that, do you
 18 have any knowledge whether they tell someone
 19 like Rick Conrad or Ron Barlow why you're taking
 20 leave? Or does -- do you know that? You may
 21 not know whether she even says anything other
 22 than, "Linda is going to be on leave for three
 23 weeks"?
 24 A That -- yeah, I don't know.
 25 Q You don't know that. Okay.

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1 Then, if you look at Page 36, that is the
 2 American with Disabilities Act policy, ADA
 3 policy, and under that policy, if you look at
 4 the top of Page 37, the, the first paragraph or
 5 second paragraph, I guess both, "If a person is
 6 not able to perform the essential functions of a
 7 job, even with reasonable accommodation, then
 8 the person is not qualified for the position.
 9 The District will reasonably accommodate persons
 10 with a disability. Such reasonable
 11 accommodation may include making facilities
 12 readily accessible to individuals with a
 13 disability, restructuring jobs, modifying work
 14 schedules, modifying equipment or other similar
 15 accommodations."
 16 Did you ever make a complaint under this
 17 ADA policy?
 18 A No.
 19 Q Did you ever ask for an accommodation? Or were
 20 you able to perform the job at all times,
 21 notwithstanding any disabilities that you might
 22 have had?
 23 A I was able to perform my job. There were times
 24 when I had to call in later than what we were
 25 required and, therefore, the FMLA intermittent

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1 leave came in --
 2 Q Okay.
 3 A -- because there were times when I woke up and I
 4 couldn't breathe and I would have to do a
 5 breathing treatment before I could even go to
 6 work.
 7 Q And you never -- at least I didn't see it in
 8 your file, you never got disciplined for that?
 9 A No.
 10 Q And -- but it might have triggered FMLA
 11 intermittent leave?
 12 A Yes.
 13 Q And you got that leave?
 14 A Yes.
 15 Q Okay. Okay. Any -- anything else in terms of
 16 seeking -- it doesn't sound like you needed any
 17 reasonable accommodation, other than what you
 18 exercised under the FMLA for the COPD. When,
 19 when were you diagnosed with COPD?
 20 A Oh, my. I don't recall.
 21 Q Okay. Long time?
 22 A I mean, it was a long time. It was, it was
 23 before I even went to sewer maintenance.
 24 Q Okay.
 25 A And it just, it progressively got worse and then

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1 I decided to quit smoking and --
 2 Q That helped?
 3 A Yeah, that -- I mean, you know, the damage was
 4 done, but yes, it did help.
 5 Q Right.
 6 A I mean --
 7 Q And so that would have been even before you went
 8 to BWQ?
 9 A Uh-huh. Yes.
 10 Q Okay. And I noticed when we came into the
 11 deposition today, you had oxygen with you?
 12 A Yes.
 13 Q Did you ever have that oxygen at work?
 14 A I don't believe I had it at the Bureau.
 15 Q Okay.
 16 A I did have it at sewer maintenance. And it's
 17 not oxygen. It's --
 18 Q Okay.
 19 A -- it's a concentrator.
 20 Q Okay.
 21 A All it does is, I can plug it into a -- an
 22 electrical outlet, it recirculates the air.
 23 Q Oh, okay.
 24 A So you don't have to have all the --
 25 Q The kind of --

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1 A -- notices saying "Hazardous," you know, "Oxygen
 2 in use."
 3 Q Right. Right.
 4 A You know, it's not flammable.
 5 Q I gotcha.
 6 A Because I went -- I had to jump through hoops
 7 when I worked in sewer maintenance because of
 8 that, so I did have some issues, at that point,
 9 with accommodations.
 10 Q Right. And that would have been five to ten
 11 years ago?
 12 A Yes.
 13 Q All right. And we had talked a little bit about
 14 your changing jobs --
 15 A Uh-huh.
 16 Q -- for a higher rate of pay?
 17 A Uh-huh.
 18 Q Were the times that you changed just because you
 19 wanted new management or new supervising? In
 20 other words, where you had, "I'm tired of this
 21 guy or this gal, I'm going to make a change"?
 22 A Yeah.
 23 Q Were there any of those types of changes?
 24 A There were sometimes that that happened, yeah,
 25 but, like I said, when I signed up, the job

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1 position that was open at water quality was an
 2 office manager's position, and I didn't know if
 3 it was a dollar more or not, but, yeah.
 4 Q Okay. All right. And, and I think I've already
 5 asked you this, but just let me confirm. Page
 6 37, the last paragraph, under the ADA policy, it
 7 says, "Any individual who believes he or she has
 8 received treatment inconsistent with the
 9 policies set forth above, or any other
 10 requirement of the American with Disabilities
 11 Act," ADA, "can file a complaint within 90 days
 12 of the date of the alleged discriminatory act or
 13 practice with the District ADA coordinator,"
 14 that is the district administrator.
 15 Other -- we talked about once you were
 16 discharged, this process didn't make much sense
 17 to you, but you didn't utilize the process or
 18 need to utilize the process prior to the
 19 termination; did you?
 20 A No.
 21 Q Okay. Then I'm looking at Page 85. I'll join
 22 you there, and, and I don't think, I don't think
 23 you were ever really written up. I didn't see
 24 anything in the file that -- unless we go back a
 25 long time.

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1 Other than what we'll look at on that
2 political front that we talked about, were you
3 ever written up for any of these offenses on
4 Pages 84 or 85?

5 And I'm not trying to set you up. I don't
6 have any write-ups. I'm just asking you whether
7 there might have been something I'm not aware
8 of?

9 A Not that I'm aware of.

10 Q I think the write-up on the political activity
11 at work included -- the only thing I could find
12 here is insubordination, is what was listed on
13 the write-up. And that's -- you see that as the
14 30- -- Number 37 on Page 86. That's the only
15 place I see "insubordination," and we'll talk
16 about that write-up.

17 But other than that, there's nothing else
18 that you recall being written up or disciplined
19 for; is there?

20 A The only thing I can remember being written up
21 for was I cussed on the radio one time. I said,
22 "Damn."

23 Q How long ago was that?

24 A When I was an inspector.

25 Q All right.

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1 A That was a long time ago, because I was an
2 inspector and it was like 100 in the shade and a
3 lady made a complaint and wouldn't answer her
4 door. And when I got back out to my truck, I
5 said "Damn" on the radio and I got written up
6 for that.

7 Q Well, I hope you've cleaned up your language
8 since then.

9 A Yeah, it only got worse.

10 Q Nothing else? Nothing else?

11 A But other than that, I'm sure I've -- you know,
12 over 40 years, I'm sure I got written up.

13 Q I mean, I think I told --

14 A Because if it comes to my mind, it's going to
15 come out my mouth.

16 Q That makes sense.

17 A Most of the time.

18 Q That makes sense.

19 A That's all I can say.

20 Q I gotcha. And, and when Aaron and I were doing
21 discovery, I think we said, "Hey, ten years is
22 plenty. We don't need to go back beyond that,"
23 and that's even too long probably. All right.

24 The only other thing we've already talked
25 about and that is the problem resolution

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1 work?

2 A Yes.

3 Q You weren't prohibited from doing that. It was
4 just you couldn't do it on the clock?

5 A Yes. And I -- I'll shut up.

6 Q Let me hand you your next evaluation. If I've
7 got this in the right order, this will be
8 Exhibit 8.

9 (WHEREUPON, Exhibit Number 8, Performance
10 Appraisal - February 17, 2017, was marked for
11 identification.)

12 Q Do you recognize this document?

13 A Yes.

14 Q And what is this?

15 A It's another -- it's an evaluation from Rick
16 Conrad.

17 Q So by then, you had moved to Bureau of Water
18 Quality?

19 A Yes.

20 Q And that was a move you wanted to make?

21 A Yes.

22 Q Did you make more money in that move? Or is
23 this one of the moves that you just wanted to
24 get out from under --

25 A No. It wasn't any more money.

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1 Q Okay. So this would have been a culmination a
2 little bit of being out of Barton's department?

3 A Yes.

4 Q Okay. And it looks like this is another good
5 review. You got an 84.1, which isn't much
6 higher than the 83, the year before, but I
7 assume you got along better with Conrad?

8 A Well, yes, and the fact that moving to the
9 Bureau of Water Quality, I wasn't as familiar
10 with that department and what it, what it did.

11 So I was just learning, so I didn't --

12 Q Expect huge ratings?

13 A Yes.

14 Q Makes sense.

15 A Yeah, because in sewer maintenance, I cleaned
16 sewers before Tracy was even working for the --

17 Q Uh-huh. Uh-huh.

18 A -- I mean, before he even came to work for the
19 District, you know, so, yes.

20 Q Let me, at a broader level, ask you this
21 question, because I think I know how you're
22 going to answer, but I want to understand, how
23 was your relationship with Rick Conrad when you
24 started?

25 And did that change at all while you worked

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1 under Rick, because you worked under Rick until
 2 you left?
 3 A Well, as far as I know, we didn't have a bad
 4 relationship. And I always told him I would be
 5 up front with him and I wouldn't blindside him
 6 with anything because I'm notorious for stating
 7 my opinion. I mean, that's just who I am.
 8 Q Right. Right.
 9 A And I always told my bosses that if I was going
 10 to -- if I did something that I thought might
 11 come back at them, then I would tell them.
 12 Q Right.
 13 A And that's what I did.
 14 Q Okay. Yeah. I have nothing that suggests to
 15 the contrary --
 16 A So --
 17 Q -- that the two of you didn't get along well.
 18 A I mean, I -- you know.
 19 Q This review, you're six months into it, it looks
 20 like, and you didn't disagree with the review;
 21 correct?
 22 A No.
 23 Q All right. And again, it's a good review. In
 24 other words, your overall rating is going to be
 25 in the "very good" category, I think. Right?

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1 Anything -- it looks like on the form itself,
 2 anything between 80 and 89 is very good --
 3 A Yes.
 4 Q -- right? And your overall rating was 84.1, so
 5 that's comfortably in the very good range;
 6 correct?
 7 A Right.
 8 Q Taking these in chronological order, at least
 9 trying to so that we can keep our timeline
 10 intact, and I'm going to hand you, now, one of
 11 the first absences, FMLA-type situations that I
 12 have and, and really, the only ones that I have.
 13 Again, maybe because we're only going back ten
 14 years or so, this will be marked as Exhibit 9.
 15 I'm sorry. That's going to be yours to mark.
 16 (WHEREUPON, Exhibit Number 9, FMLA
 17 Approval, was marked for identification.)
 18 Q Now, you may not have seen this document before.
 19 Do you recall ever having seen it?
 20 A Pardon?
 21 Q You may not have seen this document. I don't
 22 see your signature on it.
 23 A No. I don't -- I never saw this.
 24 Q Okay. Let's look at the event that it purports
 25 to relate to. It looks like FMLA approval, if

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1 you look at the first page of Exhibit 9,
 2 starting on 2/23/17. So we're going back to
 3 2017. And it looks like you were approved for
 4 intermittent FMLA, and the second page gives us
 5 a sense of who Sarah Beach was. Remember, we
 6 talked about the personnel function being
 7 handled by the City --
 8 A Yes.
 9 Q -- because you can see she's with the City;
 10 correct?
 11 A Yes. I'm sorry.
 12 Q And she's granting the FMLA. We got -- I've got
 13 nothing else. I don't think the District has
 14 anything else that I'm aware of on this, other
 15 than the approval of the leave being
 16 communicated to Rick Conrad. What was this
 17 leave for? Do you remember? It looks like some
 18 kind of episodes.
 19 A The only -- it would have had to have been
 20 pneumonia, because when I'm in and out of the
 21 hospital --
 22 Q Yes.
 23 A -- with pneumonia, because of my COPD --
 24 Q Yep.
 25 A -- it, it --

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1 Q Knocks you out?
 2 A Yeah, it does. That's the only thing I can
 3 think of --
 4 Q Okay.
 5 A -- in February of 2017.
 6 Q All right. All right. So intermittent leave
 7 would let you take off when you needed to or
 8 when you said --
 9 A For my breathing treatment.
 10 Q -- or you know, come in later, because I need a
 11 breathing treatment. This could have been
 12 consistent with that?
 13 A Yes.
 14 Q And you've already testified, there's nothing
 15 about this you were upset about. Everything was
 16 handled properly as far as you're aware?
 17 A As far as I'm aware, yes.
 18 Q Would you have shared details -- from the
 19 documentation, from my understanding, Rick
 20 Conrad would not know what this was all about.
 21 Did you share with him what this was all about
 22 or do you even recall?
 23 A I don't recall.
 24 Q Okay. Possible that you did?
 25 A It's possible, but I don't recall.

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1 Q Possible. Okay. Did he give you any trouble
 2 over this leave?
 3 A Not that I recall.
 4 Q Okay. All right.
 5 And remember, that's February of 2017.
 6 Now, I'm going to give you a document in April
 7 of 2017 related maybe to the same thing, maybe
 8 to something else. And this will be marked as
 9 Exhibit 10.
 10 (WHEREUPON, Exhibit Number 10, April 3,
 11 2017 email, was marked for identification.)
 12 A Thank you.
 13 Q Uh-huh.
 14 A It would have had to have been --
 15 Q So this is a few months later. It looks like
 16 you're, again, approved for FMLA leave. It's
 17 not much different from the approval you already
 18 had on file. Let's see.
 19 A Trying to remember if that's when I had surgery
 20 and got pneumonia in both lungs.
 21 Q Well, I'll be able to help you out because there
 22 was this point -- remember, I was telling you --
 23 when people were giving you their sick leave.
 24 Let's take a look at that.
 25 A That I...

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1 Q Maybe.
 2 A I know there for a while, I didn't know if I was
 3 going to make it or not.
 4 Q Okay. You know what? I have this written out
 5 here.
 6 No. What I get -- that happens in April
 7 and May of 2019 --
 8 A Okay.
 9 Q -- and then --
 10 A That's when I had that.
 11 Q Okay. Yeah. It starts with March of 2018,
 12 we'll look at that. But then in April and May
 13 of 2019, Rick, Chuck Jones and Barlow gave you
 14 time, so that was, like, three weeks?
 15 A Yes.
 16 Q And then in October of 2019, I think you had two
 17 more weeks. So we'll look at that separately
 18 when we get there.
 19 A Okay.
 20 Q Anything else that you recall about this?
 21 A No.
 22 Q Okay.
 23 A Had to do with pneumonia and COPD.
 24 Q Makes sense.
 25 A That's all I can say.

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1 Q And it is, in this one, for whatever reason,
 2 Nikki is copied, and I don't see her copied in
 3 Exhibit 9, but I don't know if that has any
 4 significance. Are you aware of any significance
 5 there?
 6 A No.
 7 Q Okay. But again, no problem as far as you
 8 recall in connection with getting that leave and
 9 taking that leave; correct?
 10 A (Shakes head.)
 11 Q All right.
 12 A No.
 13 Q All right. Let me give you now what will be
 14 marked as 11, Exhibit 11. And this is your next
 15 performance evaluation.
 16 (WHEREUPON, Exhibit Number 11, Performance
 17 Appraisal - May 26, 2017, was marked for
 18 identification.)
 19 Q And I think you got the last one late. That's
 20 why they're both the same year. I'm missing
 21 one. Okay. Here it is. Okay.
 22 So the last evaluation I think we looked at
 23 was in February of 2017. This one is in May. I
 24 don't know why this was so close together, but
 25 it looks like another good review. This one is

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1 from Rick, and this score is continuing to go
 2 up, I think, a little bit.
 3 Any issues with this review? Any issues
 4 with this review or...
 5 A Nope. I didn't have any.
 6 Q Okay. There is one note I want to just cover
 7 with you, and that is on the second-to-the-last
 8 page, Item 2, Rick says, "Reduce the amount of
 9 criticism that is not constructive. Handle it
 10 discreetly," did you have any idea what that
 11 related to? Maybe just speaking your mind
 12 again. I don't know.
 13 A Apparently, I said or did something outside the
 14 office that got -- I mean, people say things
 15 about their bosses --
 16 Q Right.
 17 A -- to other people, and I apparently said
 18 something and it got back to him and that was...
 19 Q But you don't recall specifically?
 20 A No, I don't remember.
 21 Q I mean, it could even be you're criticizing the
 22 board or the board president?
 23 A It could have been. I don't know.
 24 Q Okay. Okay. It wasn't a big deal to you at the
 25 time?

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1 A Didn't seem like it.
 2 Q And it doesn't look like it was a big deal to
 3 him, because, again, your overall rating was
 4 comfortably in the very good range; correct?
 5 A Yes.
 6 Q All right. Going to hand you what will be
 7 marked as Exhibit 12.
 8 (WHEREUPON, Exhibit Number 12, Position
 9 Description - Secretary, was marked for
 10 identification.)
 11 Q And I think this is simply the job description
 12 you had, now as the secretary of the Bureau of
 13 Water Quality. Again, I don't know when you
 14 would have received it, because it's not signed
 15 off on. So my question to you is: Regardless
 16 of -- and it looks to be consistent, because
 17 you've got the same duties, answer telephone,
 18 greet office visitors, determine nature of call
 19 or visit, you know, that first bullet point. I
 20 guess the bottom line is, your job didn't change
 21 in terms of what you described early in the
 22 deposition that was in the Complaint that you
 23 added to, that you were still doing the same
 24 function, but now you're doing it in the Bureau
 25 of Water Quality; is that correct --

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1 A Pretty much.
 2 Q -- generally? Any differences that you recall?
 3 A No. I guess not...
 4 Q Same kind of job, or same job and
 5 responsibilities, and this was the secretary
 6 position. All right.
 7 Now, I'm going to give you what will be
 8 marked as Exhibit 13.
 9 (WHEREUPON, Exhibit Number 13, March 21,
 10 2018 email, was marked for identification.)
 11 Q All right. So now we're -- this is going to be
 12 March of 2018, and, "Linda has been approved for
 13 FMLA for two separate conditions," so one of
 14 these, again, could be COPD. I have no idea
 15 what the second condition is; do you?
 16 A I had to, I had to have some surgery done, and
 17 during that surgery, it was supposed to be as an
 18 outpatient, but they debated on whether or not
 19 to let me go home because of my oxygen level.
 20 Q Okay.
 21 A I'm trying to remember, because I do believe
 22 they did let me go home, but I ended up back in
 23 the ER that night.
 24 Q Nothing you remember beyond the breathing,
 25 pneumonia, COPD issues that would have called

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1 for giving you intermittent leave in 2018? In
 2 other words, when you went to the hospital,
 3 whatever that was for -- do you remember what
 4 that was for?
 5 A I had a hiatal hernia.
 6 Q Okay.
 7 A And they operated on me.
 8 Q And maybe that -- the recovery of that, you
 9 would have to have intermittent time off.
 10 Again, it's not -- what I have is this and we
 11 don't know --
 12 A Right.
 13 Q -- unless you shared it with Rick, what that
 14 was. But I guess, my question to you was, any
 15 dissatisfaction with the way this intermittent
 16 leave was handled, as opposed to the previous
 17 intermittent leaves?
 18 A No.
 19 Q Okay. And do you recall talking with Rick at
 20 all about what, what this was related to?
 21 A Yeah. I mean, he and I discussed it after I got
 22 back to work.
 23 Q Okay. So in the --
 24 A Because I, I felt like he deserved an
 25 explanation.

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1 Q So that would have been the COPD. Did he know
 2 you had COPD prior to this?
 3 A He knew, yeah, he knew that I had COPD.
 4 Q He may not have known about the surgery or the
 5 reason for that?
 6 A And then I told him about the surgery.
 7 Q Okay. But you didn't have any problems with him
 8 or otherwise --
 9 A No.
 10 Q -- as a result of the surgery --
 11 A No.
 12 Q -- or the leave; correct?
 13 A No.
 14 Q So that would be yes, correct?
 15 A Yes.
 16 Q All right. When you see the transcript,
 17 sometimes these things get confusing. All
 18 right.
 19 Let me hand you another performance
 20 appraisal. This will be marked as Exhibit 14.
 21 (WHEREUPON, Exhibit Number 14, Performance
 22 Appraisal - August 2, 2018, was marked for
 23 identification.)
 24 Q All right. This looks to be a review that you
 25 received in August of 2018. Is that your

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1 signature on the last page?
 2 A Yes.
 3 Q And this gives you even a higher rating of 86.9,
 4 and no specific areas needing improvement. Take
 5 a look at it, see if, if you agree with me.
 6 This is a pretty good review.
 7 A I'm sorry. What?
 8 Q Take a look at this review, is there anything
 9 about this to you that doesn't seem fair or
 10 accurate?
 11 A No.
 12 Q He's giving you outstanding now in certain
 13 categories; correct?
 14 A Yes.
 15 Q All right. So again, no disagreement or problem
 16 with this review; correct?
 17 A No.
 18 Q All right. This will be Exhibit 15. This
 19 relates to a wage increase, I think.
 20 (WHEREUPON, Exhibit Number 15, Wage
 21 Increase, was marked for identification.)
 22 Q So now we're looking at September of 2018. Is
 23 that your signature at the bottom of the page?
 24 A Yes.
 25 Q And this looks like a wage increase; does it

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1 not?
 2 A Yes.
 3 Q You went from 19.03 an hour to 19.28 an hour?
 4 A Yes. When was this?
 5 Q This is in September of 2018. So this would
 6 have been a year before your termination, and a
 7 couple months. There's another -- let me give
 8 you another increase.
 9 A Okay. No, I know what it is. Everybody got
 10 that increase.
 11 Q Okay.
 12 A Well, let me put it this way --
 13 Q Yeah.
 14 A -- the Sanitary District changed the -- no.
 15 There goes my memory.
 16 Q Let me give you another document that might
 17 help. We'll put them together, because there's
 18 another increase that comes shortly thereafter.
 19 And this will be Exhibit 16.
 20 (WHEREUPON, Exhibit Number 16, Wage
 21 Increase, was marked for identification.)
 22 A Longevity pay.
 23 Q Oh, Exhibit 15? Or... so now we're talking
 24 about three months later, you get another
 25 increase?

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1 A Okay. The Sanitary District increased the
 2 longevity pay for all the District employees.
 3 Q Okay.
 4 A Longevity is based on the number of years of
 5 office.
 6 Q Sure.
 7 A And it depends -- and it says in the handbook,
 8 depends on how many years you've been there as
 9 to how much longevity pay you get. Well, they
 10 changed it, and that's what Exhibit 15 is. That
 11 was that increase.
 12 Q Okay.
 13 A So I'm not the only one that got an increase at
 14 that point in time.
 15 Q Okay.
 16 A Okay? And then in December, this increase would
 17 have taken place in -- that would have been the
 18 yearly increase, because they -- they gave us a
 19 yearly percentage raise. And I don't recall
 20 what that was, but everybody in the Sanitary
 21 District got, like, a 2 percent increase or a 3
 22 percent increase or whatever.
 23 Q So neither of these increases reflected the
 24 quality of your work?
 25 A No.

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1 Q And one of the things I've noticed here is --
 2 take a look at Exhibit 15, and this, this may be
 3 inconsequential, but you see your title in
 4 September is secretary. And then when I look at
 5 it in December, it looks like office manager,
 6 and I know you went back and forth in those two
 7 functions. But does that have anything to do
 8 with this?
 9 A It could, but -- no, I'm going to say no,
 10 because the title --
 11 Q It never meant anything? It kept going back and
 12 forth, it looks like?
 13 A Yeah.
 14 Q All right.
 15 A I signed -- the job I signed up in water quality
 16 was office manager. Then it was later said that
 17 I was to take it off my emails and put
 18 "secretary." Fine. No problem. Whatever. I
 19 don't care. Whatever.
 20 Q So it didn't matter?
 21 A No, it didn't.
 22 Q Distinction without a difference?
 23 A Yeah.
 24 Q Gotcha.
 25 A I mean, it was just, you know...

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1 Q Same job, same pay?
 2 A Yeah. Exactly. That's like in sanitation,
 3 they've got an office manager. She does the
 4 same functions.
 5 Q As the secretary?
 6 A Uh-huh.
 7 Q Got it. That's yours. Or that's actually,
 8 ultimately, going to be Tracy's.
 9 A Well, I'm trying to keep them, trying to keep
 10 them in order for you.
 11 Q I know. All right. This will be Exhibit 16,
 12 maybe -- 17.
 13 (WHEREUPON, Exhibit Number 17, Donation of
 14 Hours, was marked for identification.)
 15 Q Now, this, Exhibit 17, those are your -- that's
 16 your signature at the bottom of both pages;
 17 right?
 18 A Yes.
 19 Q And let's look at the time frame here, the first
 20 page is in, in April of 2019.
 21 A Uh-huh.
 22 Q Second page is in May of 2019. This looks like
 23 at least a couple of weeks off that might have
 24 been, might have -- you might have borrowed or
 25 somebody might have extended you their sick

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1 time?
 2 A Yes.
 3 Q How did that work? Do you remember?
 4 A If, if a Sanitary District employee runs out
 5 of -- exhausts all of their extended -- all
 6 their time --
 7 Q Right.
 8 A -- the extended time --
 9 Q Right.
 10 A -- then another employee of the Sanitary
 11 District can donate up to, I think it's 80
 12 hours, no less than 40, but no more than 80, and
 13 then they have to have 80 remaining hours, in
 14 their extended sick bank, in other words they
 15 can't exhaust their sick bank to give to
 16 somebody else --
 17 Q Okay.
 18 A -- that way, if employees are off and need a
 19 paycheck, then if, if people want -- other
 20 employees want to donate time, they can if they
 21 have it.
 22 Q So by this point, you would have exhausted your
 23 extended sick leave --
 24 A Yes.
 25 Q -- and to prevent you from going into vacation

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1 time --
 2 A No.
 3 Q No?
 4 A Because you have to exhaust all your time.
 5 Q Okay. Let's take a look at the handbook so
 6 we're all on the same page, because I know it's
 7 in there. That's going to be back to Exhibit 3,
 8 and see if I can find it first, there.
 9 A I used to know this back and forth.
 10 Q Yeah. I've dealt with this before. It looks
 11 like Page 18, "Sick Leave Bank," page 18 to 20,
 12 let's take a look here. So it looks like at the
 13 end of 4.4 on Page 21, just what you were
 14 talking about. Do you see right before 4.5, it
 15 says, "The District allows employees to assign
 16 their sick leave bank benefits to other District
 17 employees"?
 18 A Yes.
 19 Q So these would be the rules you're talking
 20 about, aren't they? "The employee assigning his
 21 or her sick leave bank benefits must maintain a
 22 balance in their own sick leave bank of 160
 23 hours. The employee assigning his or her sick
 24 leave bank benefits must assign those benefits
 25 in increments of 40 hours. The assignment must

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1 be noted on a Personnel Information Form, and
 2 signed by both the employee and the department
 3 head. Prior to the Personnel Information Form
 4 being processed to the HR department, the
 5 District administrator must approve the
 6 assignment. And only sick leave bank benefits
 7 may be assigned to another employee. Vacation
 8 and personal days may not be assigned to another
 9 employee."
 10 So I think it's just what you had said.
 11 You had exhausted your sick leave bank, and you,
 12 you wouldn't have been paid if other employees
 13 had not contributed to your --
 14 A Exactly.
 15 Q -- time off. Okay.
 16 And do you recall, when we looked back at
 17 Exhibit 17, this suggested you would have at
 18 least been off two weeks? Because you got 40
 19 hours from Chuck --
 20 A Yes.
 21 Q Who is Chuck?
 22 A That may, that may have been when I had the
 23 surgery, because I was off, because it was
 24 supposed to be a simple surgery, but it wasn't.
 25 I mean, it, it ended up turning out to be more

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1 than simple surgery.
 2 Q This was not the -- there was a point at which
 3 you fell and --
 4 A That was later.
 5 Q That was later. We'll get to that.
 6 A That was in September.
 7 Q Okay. So who is Chuck?
 8 A Chuck Jones.
 9 Q Yeah. Who is that?
 10 A He works in the lab at the Bureau.
 11 Q And then, of course, Rick Conrad gave you time?
 12 A Yes.
 13 Q Okay. Which I think -- I mean, does he get
 14 to -- I assume he made that decision himself --
 15 A Yes.
 16 Q -- to give you that time --
 17 A Yes.
 18 Q -- which also is consistent with having a pretty
 19 good relationship with each other; wouldn't you
 20 agree?
 21 A Yes.
 22 Q Okay. And when -- how much leave time would you
 23 have gotten each year? Do you know? That you
 24 would have exhausted by this point in 2019?
 25 A Well, I had 25 vacation days.

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1 Q And then --
 2 A And 12 sick/personal days.
 3 Q Okay.
 4 A And then you accumulate .6 each pay, of
 5 sick/personal or extended sick time.
 6 Q Okay. So you, you had used quite a bit of time
 7 by this point; correct?
 8 A Uh-huh.
 9 Q You got to say "yes."
 10 A Yes. I'm sorry.
 11 Q That's all right. At, at -- who, who would have
 12 been performing your job when you were off like
 13 this? Do you know even?
 14 A No. I'm not sure.
 15 Q Okay.
 16 A Probably Jill, but I don't know.
 17 Q That's Jill Harris?
 18 A Harris.
 19 Q Okay. Okay. When you would come -- when you
 20 came back to work, were things in order for you?
 21 In other words, you didn't have a huge backlog
 22 of things to do?
 23 A No.
 24 Q Okay. So let me give you your next performance
 25 evaluation, marked as Exhibit 18.

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1 (WHEREUPON, Exhibit Number 18, Performance
 2 Appraisal - August 12, 2019, was marked for
 3 identification.)
 4 Q Many people cringe when they get their
 5 evaluations during the course of these
 6 depositions, but yours are pretty solid; aren't
 7 they?
 8 This one is in August of 2019. Is that
 9 your signature on the last page?
 10 A Yes.
 11 Q All right. And would you agree this is another
 12 very good review?
 13 A Yes.
 14 Q Okay. Any issues or concerns with this review?
 15 A No.
 16 Q Now, as, as we get to the allegations of the
 17 claim, we're going to be looking for evidence of
 18 who discriminated or might have discriminated,
 19 and why.
 20 Would you agree with me that, at least
 21 based on this review, and the fact that Rick
 22 Conrad had just given you the 40 hours of
 23 extended sick leave, there's nothing about Rick
 24 that would suggest to you that he was
 25 discriminating against you based on your

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1 disability or based on your age or based on your
 2 use of FMLA time? Would you agree with that?
 3 A Yes, I would agree with that.
 4 THE WITNESS: Can we take a break?
 5 MR. SWIDER: Yes. Absolutely.
 6 (A short recess was had.)
 7 BY MR. SWIDER:
 8 Q All right. So we just looked at Exhibit 18.
 9 And let's look at Exhibit 19.
 10 (WHEREUPON, Exhibit Number 19, October 10,
 11 2019 email, was marked for identification.)
 12 Q Which is in October of 2019, and may not have
 13 been anything you've seen before, Linda, so
 14 let's look at this.
 15 All right. So this looks like -- now,
 16 we're in October of 2019, Linda --
 17 A Uh-huh.
 18 Q -- and this must be related to your accident?
 19 A This -- yeah.
 20 Q Okay. What happened?
 21 A In September, I fell at home and broke my femur
 22 and my -- cracked my pelvic bone and was off
 23 while I was admitted to the hospital. Then I
 24 was in the hospital for a week and then I was in
 25 a nursing home for a while.

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1 Q Okay. And were you off for six weeks or was
 2 that just what was expected? "Her latest
 3 physician's statement said she'll be" --
 4 A Oh, darn.
 5 Q -- "off for six weeks."
 6 A I know I was off for a while, a good while, but
 7 I don't think I was off -- I don't remember if I
 8 was off for six weeks or not. I know when I
 9 went back to work, I was -- I went back to work
 10 with my walker.
 11 Q Okay.
 12 A And it was a good thing I worked at Waterfall
 13 because they have an elevator.
 14 Q Yeah. I can't image. The femur, that's got to
 15 be pretty bad.
 16 A That's the bone from your knee to your --
 17 Q To your pelvic bone. Did you fall off of
 18 something?
 19 A No.
 20 Q You need a better story. You were cleaning the
 21 gutters?
 22 A No. I just tripped and fell, tripped on an item
 23 of clothing, thanks to my new dog.
 24 Q Oh, the dog. Well, that's at least a good
 25 thing. All right.

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1 This looks like you did get more donations.
 2 Let me look at that. All right.
 3 This will be Exhibit 20.
 4 (WHEREUPON, Exhibit Number 20, Donation of
 5 Time, was marked for identification.)
 6 Q All right. So is that your signature -- oh, no,
 7 "unable to sign." You may not have even been at
 8 work?
 9 A Yeah. I wasn't at work.
 10 Q Who is Tom? It looks like you were getting more
 11 donated time, extended sick time from this, in
 12 this case, Tom Noble and Terry Rickert. Who are
 13 these two?
 14 A Terry Rickert and Tom both worked at sewer
 15 maintenance prior to going to sanitation.
 16 Q So would these be co-employees?
 17 A Yes.
 18 Q Okay. And it looks like, at least when Sarah
 19 Beach is discussing this, she says, "I need to
 20 inform her when the FMLA leave will be
 21 exhausted" -- oh, I'm sorry. It's the next
 22 paragraph.
 23 "I also need to let her know she's out of
 24 extended time, and unless there's a donation, we
 25 will start to use her vacation until she had 40

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1 hours of time remaining."
 2 So did you maybe use vacation time as well
 3 as get the extended leave to make it last for
 4 the number of weeks you were out? Because you
 5 were probably out more than two weeks; right?
 6 A Yes.
 7 Q Okay. And then, you wouldn't know who was
 8 performing your job while you were gone; right?
 9 I mean, it may have been Jill Harris?
 10 A It may have been.
 11 Q You don't know?
 12 A Yeah. I do not know who for sure.
 13 Q Okay. Got it. And then it looks like you were
 14 able to come back to work without restrictions,
 15 and this will be Exhibit 21.
 16 (WHEREUPON, Exhibit Number 21, Central
 17 Indiana Orthopedics letter - November 7, 2019,
 18 was marked for identification.)
 19 Q So, have you seen this document before?
 20 A Pardon?
 21 Q Have you seen Exhibit 21 before?
 22 A Yes, I had to take it to work.
 23 Q Okay. So did you return to work on November the
 24 4th?
 25 A If that was a Monday, yes.

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1 Q Okay. Let's take a quick look at what it is.
 2 Yep, November 4th, 2019 would have been a
 3 Monday.
 4 A Okay.
 5 Q Okay. So that's -- that sounds about right to
 6 you --
 7 A Yes.
 8 Q -- or looks right?
 9 And you came to work with no restrictions;
 10 right?
 11 A Yes.
 12 Q So you had healed pretty well? That's great.
 13 You didn't have -- or you did have a walker,
 14 though? Or not?
 15 A Yes. Or my cane one or -- I went from one
 16 back --
 17 Q Oh, right.
 18 A -- one or the other. I had a walker and a cane,
 19 so...
 20 Q Okay. And neither one impacted your job
 21 performance or ability to perform your job;
 22 correct?
 23 A No.
 24 Q All right. So when you came back to work, after
 25 having taken the time off and the FMLA time off,

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1 the -- you were -- were there any ramifications
 2 to that? Were people mad at you? Were there
 3 any problems that you detected at the time you
 4 came back to work related to your time off?
 5 A Not that I was aware of.
 6 Q Okay. All right. So let's move to the
 7 elimination of your job.
 8 A Okay.
 9 Q I'm going to hand you what will be Exhibit 22.
 10 (WHEREUPON, Exhibit Number 22, Position
 11 change notice, was marked for identification.)
 12 Q You may not have seen this before, but it looks
 13 like a notice, an internal notice or document
 14 related to the termination of your position with
 15 the District. And is that signature -- you may
 16 have seen it enough to know if that is Bill
 17 Smith's, the first signature? Or maybe somebody
 18 signed it for him? I'm not sure.
 19 A Yeah. I'm not sure either.
 20 Q Okay.
 21 A I believe the "MH" is Megan Huff, is her
 22 initials. I'm not sure, but I --
 23 Q Right. May have been she signed it for him or
 24 they both may have signed it?
 25 A I don't know.

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1 Q And then, is that Conrad's signature?
 2 A I think so. I don't know. I think it is.
 3 Q I think it is.
 4 MR. SWIDER: If you can nod your head yes
 5 or no...
 6 MR. CONRAD: It is.
 7 MR. SWIDER: Yeah, it looks like it. All
 8 right.
 9 Q And I -- now, I assume this came as a total
 10 surprise to you, that when, when you were
 11 notified of the --
 12 A Yes.
 13 Q -- elimination?
 14 A Yes.
 15 Q And tell me what you recall happening. I know
 16 you've written it out, both in your charge, and
 17 probably, you know, and in the Complaint, but
 18 just, how did that day unfold for you, of the
 19 termination?
 20 A I mean, I went to work just like normal, and
 21 then Bill Smith and someone else came into the
 22 office.
 23 Q Did you not -- was that Mark McKinney -- I'm
 24 sorry. No.
 25 A Yeah.

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1 Q But you didn't know who that was?
 2 A Exactly.
 3 Q Okay.
 4 A I had --
 5 Q So he comes in with somebody you don't know?
 6 A Yes. And they want -- Bill wanted to see Rick,
 7 so I got up and I went into Rick's office and
 8 told him that Bill was with someone else and
 9 wanted to see him, and Rick come out and they
 10 went, you know, they went into Rick's office.
 11 And then Rick come out and said they wanted to
 12 see me.
 13 So I went in and we closed the door and
 14 then Bill proceeded to say that -- he proceeded
 15 to tell me that he -- they were doing away with
 16 the position. And, at one point, I stopped him
 17 and I asked him who the other gentleman was
 18 because I didn't know who he, who he was. And
 19 he said, "Well, that's Mark McKinney."
 20 And I said, "Okay."
 21 And so he -- Bill Smith said they were
 22 doing, they had done some studying and that my
 23 position wasn't the only one they were going to
 24 be doing away with, and that they were going to
 25 do away with my position. And I asked him,

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1 "Why?"
 2 And he said, "For cost effectiveness."
 3 And I just said, "Okay." I didn't say much
 4 of anything else because, I mean, that was like
 5 a gut punch --
 6 Q Right. Right.
 7 A -- you know, and so anyway, we, you know, kind
 8 of -- I don't even remember exactly what was
 9 said after that, but he did give me an option.
 10 He told me I could retire or do what Nancy did.
 11 Q And that was where you thought that meant take a
 12 laborer's job; right?
 13 A There was no thinking about it. That's the
 14 option they gave her, was to terminate her
 15 employment or take a janitor's position. There
 16 was nothing -- I mean...
 17 Q But how did you know that?
 18 A Because I was in that department when it
 19 happened.
 20 Q Okay. So this is Nancy, who? Nancy Williams?
 21 A Williams.
 22 Q And what was her job?
 23 A At the time, she was the assistant
 24 superintendent of sewer maintenance.
 25 Q And was this close to the time that your

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1 elimination occurred? Or do you remember?
 2 A No. It was quite a few years --
 3 Q Before that?
 4 A -- before that.
 5 Q Okay. And you're under- -- were you in the room
 6 when Nancy Williams was apprised of her job
 7 elimination?
 8 A No, I was not.
 9 Q Okay. And so where did you come away with an
 10 understanding of her having been offered this
 11 janitorial position?
 12 A That's exactly what she told me. And I was also
 13 informed by another, at the time, supervisor,
 14 that was in the room at the time.
 15 Q Who was that?
 16 A Steve Bowman, who they eliminated totally.
 17 Because of his position, they, they could do
 18 away with him. I mean, you know, he wasn't --
 19 he has a salaried employee and politics changed.
 20 They wanted to change management, so
 21 therefore --
 22 Q Bowman's position was eliminated?
 23 A Well, no. They just did away with Bowman and
 24 put their own person in his position.
 25 Q That's a different issue?

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1 A Yes. I mean, but --
 2 Q Nancy Williams --
 3 A -- Nancy's position was --
 4 Q Was eliminated?
 5 A -- assistant superintendent, and no.
 6 Q Okay.
 7 A They replaced her with someone else.
 8 Q Okay.
 9 A But they gave her the option to either retire or
 10 take a janitor's position.
 11 Q And she told you that?
 12 A Yes.
 13 Q Okay. Bowman confirmed that?
 14 A Yes.
 15 Q Was Bowman in the room --
 16 A Yes.
 17 Q -- during the termination?
 18 A Yes.
 19 Q All right. So if that -- if those were the
 20 choices you had, to retire or take a janitor's
 21 position, you said, "I'm not going to do either
 22 one," or how did you respond?
 23 A No. And, and he gave me three days to contact
 24 him.
 25 Q "He" is Bill; right?

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1 A Bill Smith --
 2 Q Right.
 3 A -- gave me three days to contact him. Well, I
 4 contacted an attorney. Then when I went to talk
 5 to Bill, or asked to talk to Bill, he wouldn't
 6 talk to me.
 7 Q Because he knew --
 8 A Apparently, he already knew I talked to an
 9 attorney. But that's, you know, neither here
 10 nor there. If he would have talked to me, we
 11 might not be sitting here right now.
 12 Q Okay.
 13 A But at 71 years old, no, I was not going to take
 14 a -- I mean, and with COPD, there's no way I
 15 could take a janitor's job.
 16 Q Right. Did you -- so you really didn't have a
 17 discussion at the time as to what that meant,
 18 because the comment was, you could do what Nancy
 19 did; right? Or be -- what was the comment where
 20 you could take the option and Nancy's job offer
 21 because she didn't take it?
 22 A That I could retire or do what Nancy did.
 23 Q But Nancy did not -- did she take -- she didn't
 24 take a janitor's job?
 25 A She did take the janitor's position for a short

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1 period of time before she got her stuff together
 2 and then did retire, but she was a lot
 3 younger --
 4 Q I gotcha.
 5 A -- when that all happened --
 6 Q Okay.
 7 A -- so...
 8 Q Okay. So the next thing that you do, given that
 9 you had to -- I mean, you had to believe this
 10 was unfair --
 11 A Yes.
 12 Q -- right? And you wouldn't really know why it
 13 happened. I mean, you're told that the job was
 14 no longer necessary, but -- and you're thinking
 15 there could be more to it than that?
 16 A I don't know.
 17 Q Right.
 18 A I mean...
 19 Q You wouldn't know?
 20 A Yeah. I mean, I have no idea.
 21 Q Okay. So you go to a lawyer --
 22 A Uh-huh.
 23 Q -- and, and you can answer that. I'm not going
 24 to ask you anything that was said, because you
 25 have privilege with the lawyer, but was the

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1 lawyer Aaron?
 2 A No.
 3 Q Okay. This was another lawyer. Okay. Who was
 4 that?
 5 A That was -- it was the one in Muncie.
 6 Q Okay.
 7 A And he advised me to file --
 8 MR. WILLIAMSON: Stop. Stop.
 9 Q No. You don't have to say that. Yeah. You
 10 have lawyer/client privilege --
 11 A Okay.
 12 Q -- so what we can't talk about, I don't want you
 13 to tell me --
 14 A Okay.
 15 Q -- is what you talked about with your lawyer.
 16 A Sure.
 17 Q But you can give me the name of the lawyer and
 18 you can give me when it occurred --
 19 A Okay.
 20 Q -- but not anything behind it, but anyway --
 21 A I'm going to have to think because --
 22 Q That's okay. You went to a lawyer in Muncie?
 23 A Yes.
 24 Q And then was that the point at which you filed a
 25 civil rights charge? Or did you file that after

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1 you saw Aaron? Do you remember?
 2 A No. I filed after I talked to the attorney in
 3 Muncie.
 4 Q Muncie, okay. So, so this is the civil rights
 5 charge. Let's take a look at that. And that is
 6 what will be marked as Exhibit 23.
 7 (WHEREUPON, Exhibit Number 23, Charge of
 8 Discrimination, was marked for identification.)
 9 Q All right. It looks like this got filed, or at
 10 least signed by you on December the 12th. Do
 11 you see that at the bottom?
 12 A Yes.
 13 Q And it looks like you digitally signed it, which
 14 is certainly the way things are happening these
 15 days of COVID. And did you have an opportunity
 16 to review this charge before you filed it? Or
 17 before -- yeah, before you signed and filed it?
 18 A Yes.
 19 Q Okay.
 20 A I believe I was -- I did.
 21 Q Okay. And at this point, again, you were
 22 represented by a lawyer, another lawyer in
 23 Muncie; right? Other than -- this was not
 24 Aaron?
 25 A I mean, right. I mean, he wasn't representing

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1 me. He just told me what I should do, I guess.
 2 Q Okay. So, okay. Let me ask this: Did you go,
 3 then, to the Indiana -- to the -- did you call
 4 the EEOC? How did you, how did you get this --
 5 did you fill this out yourself, or did the EEOC
 6 help you?
 7 A I called EEOC and they told me to do it online.
 8 Q Okay. And then you filled it out yourself?
 9 A (Nods.)
 10 Q So this would be your language in the charge?
 11 A Yes.
 12 Q Okay. And you see that this charge is filed
 13 against the City of Muncie? Do you see that?
 14 A (Nods.)
 15 Q You're shaking your head "yes"; right?
 16 A Yes.
 17 Q All right.
 18 A I'm sorry.
 19 Q And, and as you know, you worked for the Muncie
 20 Sanitary District; correct?
 21 A Yes.
 22 Q All right. Then let's look at the allegations,
 23 and let's make sure we've covered today, you
 24 know, anything that gave you reason to believe
 25 that you were discriminated against or

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1 terminated based on, in this case, your
 2 disability and your age. And I don't know what
 3 "other" is. It might have been a reference to
 4 FMLA.
 5 Do you see the boxes? You've got the age
 6 box checked and the disability box checked and
 7 then you see where you have the "X" under
 8 "other"? Do you know what that related to?
 9 A No.
 10 Q Maybe FMLA, I don't know.
 11 A I don't know.
 12 Q Okay. "My most recent position was office
 13 manager" -- "manager for the Muncie Sanitary
 14 District and my direct supervisor was Rick
 15 Conrad. On November 5th, 2019, District board
 16 president, Bill Smith, and Sanitary District
 17 Attorney Mark McKinney came to my office and
 18 said they wanted to speak with Rick. I showed
 19 them to Rick's office and shortly afterwards,
 20 Rick came out and said they wanted to speak with
 21 me. Bill then advised me that the City was
 22 eliminating my job and gave me the option to
 23 retire or do what Nancy did. I understood this
 24 to retire or become a laborer, as that is what
 25 was offered to former coworker, Nancy Williams."

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1 So you've already testified to that;
 2 correct?
 3 A Yes.
 4 Q "Rick and Bill knew that working as a laborer
 5 was out of the question in my case, and they are
 6 aware I am 71 years old and have disabilities
 7 and therefore knew I would have no option but to
 8 resign."
 9 And you already said they knew you were 71
 10 years old, which would have made it hard to be a
 11 laborer.
 12 "And have disabilities," and when you say
 13 "have disabilities," you're relating to COPD?
 14 A Yes.
 15 Q Are you relating any other disability?
 16 A No.
 17 Q Okay. "And therefore, I had no option but to
 18 resign." Okay. "During the meeting, I was
 19 informed that the City is also eliminating the
 20 position of billing department. This position
 21 is also held by an employee over the age of 50."
 22 Who was that referencing?
 23 A They didn't -- as far as I know, they didn't
 24 eliminate anybody.
 25 Q Okay. But they told you they were?

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1 A Yes.
 2 Q Okay. Were you aware of an individual by the
 3 name of Dan Hilbert?
 4 A Yes.
 5 Q Do you know whether his job was eliminated or
 6 not?
 7 A Yes.
 8 Q Was it eliminated?
 9 A Yes.
 10 Q And do you know anybody in the position of the
 11 assistant superintendent of sewer maintenance?
 12 A Yes.
 13 Q Who was that?
 14 A Doug Marshall.
 15 Q And do you know whether his position was
 16 eliminated? And you may not. I mean -- you
 17 know something?
 18 A You're right. I do know something.
 19 Q What is that? I get to ask you. And this was
 20 the Doug Marshall we talked about before?
 21 A Yes. Yes.
 22 Q Tell me what you think or know happened.
 23 A I don't know that -- I don't know if they did
 24 away with the position or not.
 25 Q Okay.

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1 A I know they moved him to another department.
 2 Q So they didn't let him go?
 3 A No.
 4 Q Okay. And do you have any idea how old Hilbert
 5 was?
 6 A I'd say he's in his 50s, 60s. 50s, I'd say.
 7 Q Does he have -- well, yeah. When you're
 8 referring to someone over the age of 50, you're
 9 referring to Hilbert?
 10 A Yeah.
 11 Q Okay. And did he have any disabilities of which
 12 you're aware of?
 13 A Not that I'm aware of, no.
 14 Q Did he file FMLA --
 15 A I have --
 16 Q -- leave?
 17 A I do not know.
 18 Q Okay. Now, after you filed the charge, which is
 19 Exhibit 23, did you have further contact or any
 20 contact with anybody from the EEOC?
 21 A Yeah, but I don't recall the name.
 22 Q Okay. Let's see here.
 23 (WHEREUPON, Exhibit Number 24, Response to
 24 Position Statement, was marked for
 25 identification.)

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1 Q Have you seen, or can you tell us what Exhibit
 2 24 is?
 3 A Yes. I've seen this.
 4 Q Okay. Is this -- did you submit this to the
 5 EEOC?
 6 A Yes, I did.
 7 Q Okay. All right. "So Mr. Smith is, in fact,
 8 the president of the board of Sanitary
 9 Commissioners and I do believe that he's 79
 10 years of age."
 11 So Bill is older than you; right?
 12 A Yes.
 13 Q "His position is a part-time position and his
 14 position is appointed by the mayor."
 15 Did you know that -- and I think you
 16 probably did. You may have said it here -- he
 17 assumed Nikki's duties for some period of time
 18 as an acting administrator; correct?
 19 A Yes.
 20 Q All right. And so, in that capacity, was he
 21 working full-time? Or do you even know?
 22 A I do not know.
 23 Q Okay. In their response, it says -- but, but
 24 you do know that Bill was -- is older than you
 25 are?

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1 A Yes.

2 Q Okay. In their response, it says "I was to
3 contact Nikki Grigsby of any wrongdoing or
4 discrimination. I'm sorry. But she's been on
5 administrative leave since her arrest by the FBI
6 and Bill Smith has assumed her duties as
7 District administrator."

8 So what you're saying there is what we said
9 at the beginning. You've said -- beginning of
10 your testimony, "so my complaint mechanism would
11 have been the very person who fired me"?

12 A Yes.

13 Q Okay. Because Nikki wasn't available at that
14 point?

15 A Yes.

16 Q All right. "Our handbook is also a little
17 one-sided. I have copies of prior handbooks
18 that were fair and equitable to the employer and
19 employees as well. I can supply that, if
20 needed."

21 Have you fully testified to your
22 understanding of what this means today?

23 A Yes.

24 Q Okay. Is there anything else you would add to
25 that?

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1 A No.

2 Q Okay. "There were other positions within the
3 District that could have been combined or I
4 could have been moved into and a younger person
5 would have been displaced."

6 What were you thinking of in terms of other
7 positions that you could have assumed?

8 A Well, the job that --

9 Q Sorry?

10 A -- the job at the water, wastewater plant.

11 Q What was that job?

12 A Jill's job.

13 Q Okay.

14 A She's younger than I am, same job, or the job at
15 sewer maintenance.

16 Q I'm sorry. And her name is -- that's Jill
17 Harris; right?

18 A Harris.

19 Q Okay.

20 A There's also a job at sewer maintenance that I
21 could have went into.

22 Q And who had that job?

23 A Well, at that time, it would have been either --
24 well, Haley was the younger employee.

25 Q Kaley?

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1 A Haley, uh-huh, Millsbaugh.

2 Q These are both secretary, office manager
3 positions?

4 A Yes.

5 Q Okay. Any, any others that you're referring to
6 here or would otherwise mention at this time?

7 A Tammy Branson, sanitation.

8 Q Who is this?

9 A Tammy Branson at sanitation. They were all
10 younger than I am, and they were all doing the
11 same things.

12 Q Anyone else?

13 A Can't think of what her first name is. Shoot.

14 Q That's all right. If you come up with it, just
15 tell Aaron and he can pass it on to us.

16 A Okay.

17 Q Okay? I mean, the bottom line is what you're
18 saying is, there were younger people who hadn't
19 been there as long as you, in comparable
20 positions elsewhere and they could have been --
21 as your job was eliminated, they could have been
22 bumped or taken out of their role?

23 A Yes.

24 Q Now, having a union would have guaranteed you
25 probably that kind of right --

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1 A Probably.

2 Q -- right? Because you're familiar with bumping
3 procedures --

4 A Yes.

5 Q -- based on seniority in a union environment --

6 A Yes.

7 Q -- right? Is there any policy you're aware of
8 in the handbook that would have had a similar
9 impact? In other words, a bumping-type
10 procedure in the handbook?

11 A Not anymore.

12 Q Okay. There might have been at some point?

13 A Yes.

14 Q Okay. Since the time that it's been taken out
15 of the handbook, are you aware of any bumping
16 situations that occur at the District?

17 A No. I'm not aware of anybody's job being done
18 away with either.

19 Q Okay. That doesn't mean it didn't happen.
20 You're just not aware of it, or you're sure it
21 never happened before?

22 A Pretty sure it never happened.

23 Q All right. So in, in the context of your age
24 discrimination claim, what gives you reason to
25 believe that you were discriminated based on

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1 your age, is that younger people in other
 2 comparable positions were retained while you
 3 were let go?
 4 A Yes.
 5 Q Is there anything else that gives you reason to
 6 believe that your -- you were terminated based
 7 on your age?
 8 A No. That would -- that's pretty much it. I
 9 mean...
 10 Q Okay. And did it make any sense to you that --
 11 companies and cities can only act through their
 12 employees. So when we say that in the charge,
 13 the City of Muncie discriminated against you
 14 based on your age, that means people had to have
 15 done that.
 16 So in this instance, would you be saying
 17 that Bill Smith discriminated against you based
 18 on your age? Or do you not know?
 19 A My employer.
 20 Q Your employer?
 21 A And with him being the board president, and
 22 District administrator at the time, puts him in
 23 the position -- I mean, he, you know, he's in
 24 the position of hire and fire or whatever.
 25 Q Okay. So we talked about this earlier. There's

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1 nothing that you have in the way of information
 2 that would suggest to you that Rick Conrad
 3 discriminated against you based on your age?
 4 A No.
 5 Q Okay. So if -- and again, there may be more
 6 people involved than you know and the discovery
 7 process is ongoing, but at this point, the
 8 person you would say who discriminated against
 9 you based on your age would be at least Bill
 10 Smith?
 11 A Yes.
 12 Q Okay. And from your standpoint, you don't know
 13 what role Mark McKinney had in this at all,
 14 other than he was in the meeting with you when
 15 you were terminated?
 16 A He was their attorney. That's all I know.
 17 Q Right. Who -- I can tell you, we generally
 18 don't have a decision-making role for our
 19 clients, but you don't know whether he was part
 20 of the decision or not?
 21 A Exactly.
 22 Q All right. And you don't know to what extent
 23 Rick was a part of the decision, if any?
 24 A Exactly.
 25 Q So that would be the basis for your claim that

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1 you were discriminated against based on your
 2 age. What would be the basis for your
 3 conclusion that you were discriminated against
 4 based on your disability? Anything different
 5 or...
 6 A Just other than what I had to go through when I
 7 was in the other department with my
 8 concentrator. I don't know if anybody else had
 9 to go through that or not.
 10 Q All right. But who would have been involved in
 11 that decision? Would that have been --
 12 A That would have been --
 13 Q Terry?
 14 A -- Tracy or Doug or the board or I don't know.
 15 Q But you don't know --
 16 A For sure, no, I don't.
 17 Q -- about that?
 18 Now, the three people that you mentioned,
 19 and there may be a fourth, who had jobs like
 20 yours, did any of them have disabilities that
 21 you're aware of?
 22 A The comparable positions, no, not, not that I'm
 23 aware of. I'll put it --
 24 Q Right. They --
 25 A -- that way.

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1 Q -- could have had disabilities?
 2 A I know that Jill had knee replacement --
 3 Q Okay.
 4 A -- but I don't know how much of a disability or
 5 if -- you know, I don't dig into their medical
 6 histories.
 7 Q Right. Right. So from your perspective, at
 8 least, again, it might come out through
 9 discovery, you're not aware of whether they had
 10 disabilities or not?
 11 A Right.
 12 Q Okay. Or whether they were regarded as having
 13 disabilities or not, even if they didn't have
 14 disabilities?
 15 A Right.
 16 Q And then with respect to FMLA, being retaliated
 17 against for that, we talked about, at least
 18 during the course of your deposition, you didn't
 19 think any of that occurred. Is there anything
 20 else that -- is there anything that suggests to
 21 you that you were being retaliated against based
 22 on your FMLA leaves?
 23 A Not that I'm aware of.
 24 Q Okay. And again, that might come out through
 25 discovery, and sometimes it can even relate to

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1 timing. But there's nothing that you're aware
 2 of that would suggest to you, at this point,
 3 that you were discriminated against or
 4 retaliated against based on your using FMLA
 5 time; is that correct?
 6 A Right. Yes.
 7 Q Okay. Do you recall receiving a decision from
 8 the Equal Employment Opportunity Commission in
 9 response to your charge? In other words, did
 10 the EEOC -- do you know whether they made any
 11 finding?
 12 A I don't remember. I just know that they sent me
 13 a letter giving me -- telling me I had a right
 14 to sue.
 15 Q Got it.
 16 A So I don't know.
 17 Q All right. Let me hand you what is marked as
 18 Exhibit 30.
 19 COURT REPORTER: That would be Exhibit 25.
 20 MR. SWIDER: That's because my 24 looks
 21 like a 29.
 22 (WHEREUPON, Exhibit Number 25, Dismissal
 23 and Notice of Rights, was marked for
 24 identification.)
 25 Q All right. Exhibit 25. Do you remember seeing

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1 this?
 2 A Yes, I do.
 3 Q Okay. And so, "The EEOC issues the following
 4 determination based upon its investigation: The
 5 EEOC is unable to conclude that the information
 6 obtained established violations of the statute.
 7 This does not certify that the Respondent is in
 8 compliance with the statutes. No finding is
 9 made as to any other issues that might be
 10 construed as having been raised by this charge."
 11 So at least, what you understood is that
 12 they dismissed your charge, which then gave you
 13 the right to bring a lawsuit?
 14 A Right.
 15 Q Okay. And when it says, "No finding is made as
 16 to any other issues," they wouldn't have
 17 authority to decide the FMLA issue, if that had
 18 been raised, but you don't recall whether you
 19 raised that at the EEOC or not?
 20 A No, I do not.
 21 Q Okay. And you can see at the bottom, this was
 22 sent to the City of Muncie; do you see that?
 23 A That was because that's what I was told to do by
 24 the EEOC.
 25 Q Okay. So in other words, when you filed your

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1 charge against the City, that came from advice
 2 through the EEOC?
 3 A Yes.
 4 Q Okay. And do you remember who gave you that
 5 advice?
 6 A No, I do not.
 7 Q Okay. All right. Let me hand you what will be
 8 marked as Exhibit --
 9 A As I tried to explain to them they were two
 10 different entities.
 11 Q Went in one ear and out the other?
 12 A Apparently.
 13 Q Okay. All right. Let me give you what's marked
 14 as Exhibit 26.
 15 (WHEREUPON, Exhibit Number 26, Indiana
 16 Department of Workforce Development
 17 Determination, was marked for identification.)
 18 Q Did you file for Unemployment Compensation
 19 Benefits after your termination?
 20 A Yes, but not right away.
 21 Q Okay. What happened -- why, why did you wait on
 22 that?
 23 A Because I was told that I needed to wait, so I
 24 did.
 25 Q Okay. And were you told by a lawyer or...

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1 A No.
 2 Q Okay. Who -- where did you get that advice?
 3 A From someone -- and there, again, I didn't take
 4 names, which I know better --
 5 Q Right.
 6 A -- but --
 7 Q Was this at Workforce Development, then?
 8 A Yes.
 9 Q Okay. So --
 10 A And it was somebody on the phone.
 11 Q Well, let me ask you this: There was a point at
 12 which you did file for benefits?
 13 A Yes.
 14 Q Do you recall when that was?
 15 A I want to say that it was like in January,
 16 January, February, maybe, but then I didn't get
 17 anything until -- I didn't start receiving any
 18 benefits until late in 2020.
 19 Q Did they make up the --
 20 A Yes.
 21 Q Okay.
 22 A They did.
 23 Q And at that time -- and let me just cut to the
 24 chase on this, because I'm going to ask you more
 25 questions about it, but it seemed to me that

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1 A -- and I was hired as an administrative
2 assistant.
3 Q Okay. Let me hand you, I think the
4 documentation, communications relative to that,
5 as Exhibit 27.
6 (WHEREUPON, Exhibit Number 27, Ames
7 Construction letter - November 23, 2020, was
8 marked for identification.)
9 Q Is this the job you're talking about --
10 A Yes.
11 Q -- that you were offered?
12 A Yes.
13 Q Did you accept -- it looks like you accepted the
14 job?
15 A Yes.
16 Q And you would be making more there than you were
17 making for the District, if I read that right?
18 A Yes.
19 Q Okay. And the benefits were comparable?
20 A Yes.
21 Q Did you -- how long -- are you still working
22 there?
23 A No.
24 Q What happened?
25 A I got laid off because there wasn't enough work

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1 for two administrative assistants --
2 Q Oh.
3 A -- so...
4 Q When did you get laid off?
5 A February the -- February 18th, I think. I'm not
6 sure.
7 Q Okay.
8 A But it was in February.
9 Q Have you been looking for work since then?
10 A Yes.
11 Q Okay. What kinds of efforts have you made?
12 A Same thing, online, through Workforce
13 Development in Muncie, with the COVID, not --
14 well, I can't say it's going down, because it's
15 coming back up now, but before, as it was going
16 down, but yes, I've looked and I have the
17 documents.
18 Q All right. If you would just give all that
19 to -- or make sure he has it all --
20 A Okay.
21 Q -- because part of your responsibility, and you
22 recognize it, is to mitigate your damages. That
23 means you have to be out there trying to find
24 employment. And let's see what this is. Okay.
25 I'm going to hand you now what will be

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1 marked as Exhibit 28, which would be your
2 responses to our interrogatories.
3 (WHEREUPON, Exhibit Number 28, Plaintiff's
4 Answers to Defendant's First Set of
5 Interrogatories, was marked for identification.)
6 Q Go over a few things there. I think you've
7 pretty much testified to anything and everything
8 in this, but we'll take a look. Do you
9 recognize this document?
10 A Yes.
11 Q And is this your writing on the top
12 right-hand --
13 A Yes.
14 Q -- corner? And you've looked at it and made
15 some changes; is that correct?
16 A Yes. Just in the spelling of --
17 Q Jill Harris's name?
18 A Yes.
19 Q It was Jill Paris. So on the second page,
20 you're asked to identify potential witnesses in
21 this, and I just want to go through and make
22 sure of any information you haven't already
23 passed on to me. "Dan Hilbert has information
24 regarding plaintiff's employment and
25 performance, as well as defendant, Muncie

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1 Sanitary District's policies and procedures."
2 What do you think Hilbert has that would be
3 relevant to your situation, specifically?
4 Because he was let go; right?
5 A Yes.
6 Q Okay.
7 A And then -- yes, that's all I can say.
8 Q Any information that he would add to your claims
9 that you're aware of now?
10 A No, not that I'm aware of. I don't know if he
11 would add anything to it or not.
12 Q How about Jill Harris?
13 A I don't know about Jill, I don't know if she
14 would add to it or not.
15 Q Grigsby?
16 A I have no idea.
17 Q Rick is here?
18 A Uh-huh.
19 Q And anything else that Rick might add, other
20 than the obvious, which is he was your
21 supervisor. He was there when you were
22 terminated. He gave you his reviews, you know,
23 we've gone through most of that. Is there
24 anything else that Rick would be able to add?
25 A I don't know. I don't --

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1 Q You're right. And -- but you listed him and
2 these others as witnesses, you know. It says,
3 "Identify all persons with knowledge or
4 information regarding any facts or allegations
5 in your Complaint. Please identify the facts,"
6 and you've got a broad reference to it. I just
7 want to be sure I understand that I'm not
8 missing anything.

9 In other words, from your standpoint, there
10 may be things that are -- develop in discovery,
11 but at this point, is there anything else that
12 any of these people would add to your claim?

13 In other words, confirm or give evidence
14 that you were discriminated against based on,
15 you know, your age, your disabilities, or your
16 FMLA filing?

17 A I don't think so.

18 Q Okay. And that would be the same for Will-
19 Bill Smith and John Barlow?

20 A Yeah.

21 Q So then you're asked specifically in
22 Interrogatory Number 7, which is on Page 4,
23 "Identify the facts and documents supporting the
24 allegation in your Complaint that defendant
25 retaliated against you for asserting your rights

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1 under the FMLA."

2 And I think -- oh, it looks like we have,
3 "Plaintiff worked for defendant for several
4 years. During her tenure with defendant,
5 plaintiff submitted several FMLA leave requests.
6 Plaintiff's leave request documents are in the
7 possession, custody, and control of defendant.
8 These leave requests includes requests submitted
9 in March and September of 2019. Defendant
10 terminated plaintiff's employment and had her
11 duties absorbed by employees she trained, and
12 who had not used FMLA leave as opposed to
13 terminating them and having their" -- "having
14 her absorb their duties."

15 Now, I understand that much of this is
16 often completed by the lawyer, because we do
17 that, and then you look at or read it before
18 it's submitted.

19 Is there any evidence, other than what
20 you've testified to today, that would suggest
21 that your FMLA exercise had anything to do with
22 your termination?

23 A I don't know.

24 Q Okay. Okay. And who are the employees that you
25 trained?

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1 A Jill.

2 Q Okay. Anybody else that this references?

3 A Kaley.

4 Q Anybody else?

5 A (Shakes head.)

6 Q Okay.

7 A No.

8 Q Okay.

9 A Sorry.

10 Q No. You're fine. That's what I'm trying to get
11 at here.

12 Looking at Interrogatory Number 9, this
13 asks about people who were treated more
14 favorably than you, under similar circumstances,
15 and you said, "Based on information and belief,
16 Jill Harris is a non-disabled employee who is
17 much younger than I whose job was not
18 eliminated."

19 Any-, anything else that you would point to
20 here? "Identify all other similarly situated
21 employees that you allege were treated more
22 favorably," anybody else that you would point
23 to, other than Jill?

24 A Just the ones that I named earlier.

25 Q Which would be Kaley and who was the -- there

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1 was a third person?

2 A Tammy and --

3 Q You didn't remember the fourth, but let me see
4 if that Tammy is what we have.

5 A Her last name is Quackenbush.

6 (Court reporter clarification.)

7 Q So those four, who were similarly situated, in
8 that they had the secretarial/office manager
9 functions, younger than you, less tenure than
10 you, don't know about their FMLA activity or
11 their disabilities, but their jobs remained,
12 while yours was terminated?

13 A Yes.

14 Q Okay. Okay. Now, Interrogatory Number 10, your
15 answer, "Plaintiff's employment was terminated
16 on or about November 10th, 2019. Based on
17 information and belief, plaintiff's employment
18 was terminated based on her age, disability, and
19 her use of FMLA leave."

20 That's the heart of the case. Have we
21 fully discussed in this deposition today all
22 facts that led you to this conclusion?

23 A Yeah, I believe we have.

24 Q Okay. Then, let's see here, looks like in terms
25 of other income, you sold some Avon and shirts?

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1 A 31.
 2 Q Okay. Is that a -- like, what is 31?
 3 A Tote bags and purses and...
 4 Q Okay. All right. I just want to go over with
 5 you a few questions about the income again, so I
 6 understand the nature of any claims for back
 7 pay. And I'm going to give you now, which I
 8 think is consistent with what we discussed about
 9 how much you were earning with the District,
 10 Exhibit 29.
 11 (WHEREUPON, Exhibit Number 29, Earnings
 12 History Report, was marked for identification.)
 13 Q And what this purports to be -- and I'm pretty
 14 sure you haven't seen it before -- is your
 15 earnings for 2018 and 2019 with the District.
 16 And if you look at the second page, the gross
 17 wage for 2018 looks to be \$39,722.40; do you see
 18 that?
 19 A Yes.
 20 Q Is that, is that about right from your
 21 understanding?
 22 A Yes.
 23 Q And then if you look at the last page, which
 24 relates to the earning for 2019, which would
 25 have been a month short or so, or almost two

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1 months, you got your last paycheck in December,
 2 so less than that, again, about the same amount
 3 \$39,106. You might have gone over \$40,000 --
 4 A Yes.
 5 Q -- if you had worked out the year. Does that
 6 make sense to you?
 7 A Yes.
 8 Q Okay. Now I'm going to hand you tax returns,
 9 and we'll start with 2020. And that's going to
 10 be Exhibit 30.
 11 (WHEREUPON, Exhibit Number 30, 2020 1040
 12 U.S. Individual Income Tax Return, was marked
 13 for identification.)
 14 Q Now, looking at this tax return, when you look
 15 at the first page --
 16 A Third page?
 17 Q First page.
 18 A Oh, okay.
 19 Q Number 1, do you see halfway down, "Wages,
 20 salaries, tips, attach W-2s," and this would
 21 suggest that in terms of income from other
 22 employment, you made only \$2,829 in 2020. Is
 23 that accurate?
 24 A Yeah.
 25 Q As far as you're aware?

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1 A I think so. I'm...
 2 Q Okay. And then it looks like you've got
 3 pensions and annuities of \$36,656. Is that the
 4 lump sum PERF monies that they gave you? Do you
 5 know what that is?
 6 A That would, that would have been a part of it,
 7 yeah. Yes.
 8 Q And then --
 9 A Because this is for 2019.
 10 Q It should --
 11 A 2019, filed in 2020?
 12 Q No. I think it's for 2020, so you're a little
 13 bit ahead --
 14 A Okay.
 15 Q -- of the curve here if you've already got it
 16 produced for last year, because it's not due
 17 until May.
 18 A All right. Well, then apparently it is just
 19 my -- because I had to withdraw money out of my
 20 pension to pay my bills, to help pay my bills.
 21 Q But that's -- if you add these two together, do
 22 you see the social security benefits?
 23 A Yes.
 24 Q Which, when did you start drawings social
 25 security? Because you were eligible even while